

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

	:	
IN THE MATTER OF:	:	
	:	
R. ALEXANDER ACOSTA,	:	
Secretary of Labor,	:	
U.S. Department of Labor,	:	
	:	
Plaintiff,	:	Civil Action No.
v.	:	017-C-589
	:	
DURA-FIBRE, LLC,	:	
	:	
Defendant.	:	

Wednesday
November 29, 2017

Appleton, Wisconsin

DEPOSITION OF:

SCOTT BLAIR

taken on behalf of Counsel for the Plaintiff, pursuant to notice, at the DOL/OSHA Appleton Area Office, 1648 Tri Park Way, Appleton, Wisconsin, at 9:00 a.m., when were present:

APPEARANCES:

FOR THE PLAINTIFF:

DAVID J. RUTENBERG, ESQ.
U.S. DEPARTMENT OF LABOR
230 South Dearborn Street
Room 844
Chicago, Illinois 60604
312-353-6990
rutenberg.david.j@dol.gov

FOR THE DEFENDANT:

JOHN H. ZAWADSKY, ESQ.
REINHART, BOERNER, VAN DUREN, S.C.
22 East Mifflin Street
Suite 600
Madison, Wisconsin 53703
602-229-2202
jzawadsky@reinhartlaw.com

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DIRECT CROSS

Scott Blair

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P R O C E E D I N G S

(8:55 a.m.)

MR. RUTENBERG: We are here on the record today for the deposition of Mr. Scott Blair in the matter of Secretary of Labor v. Dura-Fibre, LLC. I request the court reporter to administer the oath.

THE REPORTER: Please raise your right hand.
WHEREUPON,

SCOTT BLAIR
was called as a witness by Counsel for the Plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RUTENBERG:

Q Can you please state your name and spell it for the record?

A Scott Blair, B-L-A-I-R

Q What is your home address and telephone number, Mr. Blair?

A 73 South Oakwood Road, Oshkosh, Wisconsin 54904, phone number 920-237-0336.

Q And do you have a personal cell phone number?

A Yes.

Q What is the personal cell phone number?

A 920-420-0423.

1 Q Mr. Blair, my name is Dave Rutenberg. I'm an
2 attorney with the Solicitors Office of the U.S. Department
3 of Labor. I represent the Occupational Safety and Health
4 Commission in this matter.

5 In this room is also John Zawadsky of the law
6 firm Reinhart, Boerner, Van Duren, S.C. who represents
7 Dura-Fibre in this case, correct?

8 A Yes.

9 Q And he represents you as a management employee
10 and 3(b)(6) designee for the purposes of today's
11 deposition, is that correct?

12 A Yes.

13 Q Okay, you're here because you received two
14 notices of deposition, is that correct?

15 A Correct.

16 Q Okay, have you seen these notices of deposition?

17 A I don't believe I've seen them physically. I've
18 just been told of them.

19 Q Okay, I request, you know, I notice that you're
20 looking over to your attorney. The questions are for you,
21 so it's just a matter of whether you know or don't know,
22 okay? If you don't know, then you don't know.

23 What I'm handing you is, I've pre-labeled as
24 GX-1 and GX-3 for the record. I've pre-labeled
25 sequentially the exhibits that will be used for today's

1 deposition and tomorrow's deposition, we'll be using the
2 same sets of records.

3 A Okay.

4 MR. ZAWADSKY: You have copies for me, don't you?

5 MR. RUTENBERG: May I request Counsel hold on to
6 the copies for tomorrow to the extent ---

7 MR. ZAWADSKY: Okay.

8 MR. RUTENBERG: So, what I have pre-labeled is
9 GX-1 and GX-3. Take a look, take a moment to look at
10 them. While Mr. Blair is reviewing the two exhibits in
11 front of him, I'll just state, I might refer to them as GX
12 rather than exhibits. Just know that GX and exhibits are
13 interchangeable for today's purposes.

14 (Government's Exhibit Nos. GX-1 and GX-3 were
15 marked for identification.)

16 MR. ZAWADSKY: Okay.

17 MR. RUTENBERG: Let me know when you're ready.

18 MR. ZAWADSKY: Counsel, he may not really
19 understand what this is.

20 MR. RUTENBERG: Okay.

21 MR. ZAWADSKY: Okay.

22 MR. RUTENBERG: Referring to Exhibit A attached
23 to GX-3?

24 MR. ZAWADSKY: Yes.

25 MR. RUTENBERG: Okay.

1 MR. ZAWADSKY: He understands he's supposed to
2 testify on a couple of the subject matters, but he
3 doesn't, I don't think he understands that he's not going
4 to
5 testify --

6 MR. RUTENBERG: Okay. Mr. Blair, let me know
7 when you're ready, or if you have any questions I can
8 answer those for you.

9 THE WITNESS: Okay, hold on one second, sure.

10 MR. ZAWADSKY: I mean you're free to ask him
11 questions about anything you want, but I'm just, as a --
12 BY MR. RUTENBERG:

13 Q So, have you had a chance to review GX-1 and GX-
14 3?

15 A Yes.

16 Q Okay, Mr. Blair, you're representing the
17 corporation Dura-Fibre LLC, as well as yourself, at this
18 deposition, is that correct?

19 A Yes.

20 MR. ZAWADSKY: Can I just interject for limited
21 purposes for a couple of the subject matters and the
22 30(b)(6) notice.

23 MR. RUTENBERG: That's right, we'll get to that.

24 BY MR. RUTENBERG:

25 Q You understand that as the designated individual

1 testifying at this deposition for certain topics, on
2 behalf of the corporation, you have to testify to matters
3 that are known or reasonably available to the organization
4 as identified in the Notice of Deposition?

5 A Yes.

6 Q If your answers as an individual is different
7 from that of the corporate representative, please state so
8 on the record.

9 A Okay.

10 Q And in particular, you're testifying regarding
11 subject matters six and 14, as set forth in Exhibit A to
12 GX-3, is that correct?

13 A Yes.

14 MR. RUTENBERG: For the record, Mr. Blair is
15 testifying both in his personal capacity and as the
16 designated corporate representative, pursuant to Rule
17 30(b)(6) of the Federal Rules of Civil Procedure.

18 Counsel for Plaintiff and counsel for
19 Defendants agreed prior to deposition that the individual
20 deposition of Scott Blair and the 30(b)(6) deposition of
21 the corporate defendant, with regard to the stated topics,
22 would occur simultaneously, rather than during two
23 distinct depositions.

24 This approach is agreed upon in part for
25 efficiency purposes. Mr. Zawadsky, do you agree with this

1 characterization?

2 MR. ZAWADSKY: I do.

3 BY MR. RUTENBERG:

4 Q Mr. Blair, have you ever been deposed before?

5 A I don't believe so.

6 Q I want to start with explaining the process and
7 ground rules by which the deposition will be conducted.
8 The first rule is that since the court reporter is taking
9 down everything that is said and is transcribing the
10 words, we both need to make sure that all of our
11 interactions, my questions and your answers, are verbal.
12 That means answers cannot be a head nod, a hand gesture,
13 or any other nonverbal queue. Will you make sure all of
14 your answers are verbal?

15 A Yes.

16 Q This also applies to other normal things people
17 do in most conversations like saying uh-huh to mean yes.
18 Will you use your words to answer any questions instead of
19 saying things like uh-huh?

20 A Yes.

21 Q I will ask the questions and you will answer the
22 questions. The court reporter will be taking down
23 everything we say. Do you understand?

24 A Yes.

25 Q Because the court reporter is taking down

1 everything we say, you need to wait until my entire
2 question is asked before you answer. I know that in
3 casual and unrecorded conversation people speak over
4 people all the time. That will make the court reporter's
5 job very difficult. Will you wait to answer a question
6 until I am finished asking, even if you think you know
7 what the question will be?

8 A Yes.

9 Q The court reporter swore you in before we
10 started, is that correct?

11 A Yes.

12 Q Your answers are being given under oath, just
13 like if we were in a court room. Do you understand?

14 A Yes.

15 Q If you don't understand something that I am
16 asking or something that I am saying, you may let me know.
17 I will clarify or rephrase the question. I want to make
18 sure you understand the questions before you answer them.
19 Will you ask for clarifications when you need them?

20 A Yes.

21 Q I also ask that you answer all questions fully
22 and truthfully. Will you answer all questions fully and
23 truthfully?

24 A Yes.

25 Q If you need a short break, let me know, and we

1 will take a break at the appropriate time. If I have
2 asked you a question, answer the question first and then
3 request that a break be taken. Will you answer a pending
4 question before asking for a break?

5 A Yes.

6 Q There are a few questions that I must ask. Have
7 you had any alcohol in the last 24 hours?

8 A No.

9 Q Have you taken any drugs in the last 24 hours?

10 A No.

11 Q Are you taking any medications that will impair
12 your ability to answer my questions accurately, fully, and
13 truthfully?

14 A No.

15 Q Are there any medications that have been
16 prescribed to you that you are supposed to be taking or
17 have not been taking pursuant to your doctor's directions?

18 A No.

19 Q Is there any other reason you think that might
20 affect your ability to give me accurate, full, and
21 truthful answers?

22 A No.

23 Q What did you do to prepare for today's
24 deposition?

25 A I reviewed some of the paperwork that attorney

1 Zawadsky provided to me over the past several weeks.

2 Q What kind of paperwork?

3 MR. ZAWADSKY: Object, attorney/client privilege.

4 BY MR. RUTENBERG:

5 Q Agreed. Did you speak to, aside from your
6 attorney, did you speak to anyone about the deposition
7 before coming in, before today?

8 A Yes, my president of Dura-Fibre, Luke Benrud.

9 Q And what did you and Mr. Benrud talk about?

10 MR. ZAWADSKY: Can I just specify, outside the
11 presence of counsel.

12 THE WITNESS: Oh, no.

13 BY MR. RUTENBERG:

14 Q Aside from Mr. Benrud, have you spoken, within
15 the presence of counsel, have you spoken to anyone else
16 about today's deposition?

17 A Just my wife, letting her know that's where I was
18 going to be today.

19 Q I want to turn to talking about your background
20 and about Dura-Fibre, LLC generally. What is the highest
21 level of education you have you've obtained?

22 A Associates Degree.

23 Q In what?

24 A Police science.

25 Q Say that again.

1 A Police science.

2 Q Police science?

3 A Yes.

4 Q From where?

5 A Fox Valley Technical College.

6 MR. ZAWADSKY: Can I just ask, do you want
7 anything to drink?

8 THE WITNESS: Not right now.

9 MR. ZAWADSKY: Okay.

10 THE WITNESS: Check back in an hour.

11 MR. ZAWADSKY: No, I just, you seem like you're
12 getting a little bit hoarse --

13 BY MR. RUTENBERG:

14 Q When did you graduate?

15 A 1995.

16 Q What did you do after college?

17 A I was a deputy, sheriff's deputy for 14 years.

18 MR. RUTENBERG: Off the record.

19 (Off the record.)

20 MR. RUTENBERG: Okay, back on.

21 BY MR. RUTENBERG:

22 Q So when did you stop, when did you, what did you
23 do after being a sheriff's deputy?

24 A I came to Dura-Fibre.

25 Q That's Dura-Fibre, LLC?

1 A Yes.

2 Q Okay, for today's purposes, we'll just refer to
3 Dura-Fibre, LLC as Dura-Fibre or the Company, do you
4 understand?

5 A Okay, yes.

6 Q If you don't know what company I am talking
7 about, feel free to ask, but I'm sure that will not a
8 problem today.

9 A Of course.

10 Q So what year was that when you started with Dura-
11 Fibre?

12 A 2009.

13 Q Was Dura-Fibre, was it called Dura-Fibre in 2009?

14 A Yes.

15 Q And what did you do for Dura-Fibre when you first
16 started there?

17 A I started working on the laminator. I was a
18 production operator.

19 Q And what was your job as a production operator?

20 A I held a couple different jobs. My primary job
21 eventually was dry-end operator.

22 Q Okay, and what does that entail for you to do?

23 A Runs the, runs the main part of the laminator,
24 what's called the dry-end. It takes care of quality,
25 order changes, controls the pace of the machine. You can

1 act as a lead, in leu of a lead.

2 Q What does it mean to act as a lead?

3 A Basically, oversee the entire, basically oversee
4 the other four or five guys on the machine and make any
5 decisions if there is no supervisor available.

6 Q What did you do after you were a production
7 operator?

8 A I was promoted to shift supervisor on the third
9 shift.

10 Q When was that?

11 A It was around March of 2012.

12 Q And what were your duties in the position as
13 shift supervisor, the third shift?

14 A I was the scheduler, primary scheduler on the
15 laminator, and then at that point, pretty much the only
16 machine that worked on third shift was the laminator, so I
17 was the overseer of the laminator. Any decisions that
18 were, any overall decisions that needed to be made that a
19 lead wasn't capable of making would come to me. I would
20 just, overall plant supervision.

21 Q When was the third shift?

22 A What's that?

23 Q What time of day is third shift?

24 A 10:00 p.m. to 6:00 a.m.

25 Q Did you supervisor individuals who worked on the

1 laminator?

2 A Yes.

3 Q Who?

4 A Names? There's too many names to remember.

5 Q Okay.

6 A A lot, most people aren't even here, aren't even
7 at Dura-Fibre anymore.

8 Q What were you after, did you have any positions
9 after you were shift supervisor on third shift?

10 A was, after third, I was on third shift for about
11 a year and then around March, February or March of 2013, I
12 moved to first shift as the primary plant supervisor.

13 Q I'm sorry, you said the first shift?

14 A Yep.

15 Q Primary plant supervisor?

16 A Yes.

17 Q Is that a different position than shift
18 supervisor on third shift?

19 A No, just had more responsibilities. I was more
20 responsible for the converting machines, more employees,
21 got more involved in meetings with the office staff. Just
22 more to do with the day-to-day business activities on the
23 first shift than what I was doing on the third shift.

24 Q Why don't you give some examples of those day-to-
25 day activities?

1 A Just working with customer service more, being
2 asked when orders can ship and run, working with the
3 converting machines to make sure specific orders for that
4 day were going to get out the door. I was more a part of
5 the safety committee at that point, the safety team.

6 Q As a result of being a plant supervisor?

7 A More or less just being on first shift. While I
8 was on third shift there was a different supervisor who
9 was on first shift that did a lot of those same
10 responsibilities.

11 Q I understand. Who was that?

12 A His name was Steve Griffin.

13 Q Did you believe Steve Griffin left or got a new
14 job?

15 A Yeah, he's been gone for a couple of years now.

16 Q What were your duties as part of the safety, well
17 first of all, let me ask you, what's the safety team?

18 A The safety team is the, safety team would meet
19 once a week to just discuss any, just in open forum, any
20 safety related topics that any employees or office staff
21 had. We'd also review any accidents that happened since
22 we met last.

23 Q Who was on the safety team?

24 A Generally, it was myself, Luke Benrud, Jamie
25 Gonnering, at the time, and then any, any production

1 staff, any union employees that wanted to come to the
2 meeting were welcome.

3 Q What was Luke Benrud's position?

4 A He was director of operations.

5 Q And Jamie Gonnering?

6 A Human resources manager.

7 Q Is Jamie Gonnering still with the company?

8 A No.

9 Q Do you know why she left?

10 A She pursued a different employment at a different
11 company.

12 Q Where is she now?

13 A I don't believe, I thought it was called some
14 Flare Flexible Packaging, I think. That's where she was
15 last. I don't know if she's moved on since then. I'm not
16 aware.

17 Q Understood. Luke Benrud is no longer the
18 director of operations, is that right?

19 A Correct.

20 Q What is his position now?

21 A President of Dura-Fibre.

22 Q Did he move from director of operations to
23 president of Dura-Fibre?

24 A Yes.

25 Q When did that happen?

1 A Two years ago, two-and-a-half years ago.

2 Q Beside from the safety team, excuse me, do you
3 call it the safety committee, safety team?

4 A Just safety team.

5 Q Did you still supervise folks during the first
6 shift?

7 A Yes.

8 Q Did you supervise Tim Jacobs?

9 A Yes.

10 Q And did you supervise Steve Wilz?

11 A I did.

12 Q What's your, what position did you have after you
13 were plant supervisor?

14 A I'm currently production planning manager.

15 Q And that's what you, that's the position you took
16 after plant supervisor?

17 A Yes.

18 Q Okay.

19 A I've been in that position for approximately a
20 year-and-a-half.

21 Q Okay, can you repeat the name of the title?

22 A Production planning manager.

23 Q Now, what does that entail you to do?

24 A I still maintain scheduling on the laminator. I
25 do most of the raw material allocations for our job, for

1 our work orders, and I do probably 90 percent of the
2 purchasing in the company.

3 Q Are you still on the safety team?

4 A No.

5 Q Who replaced you as your previous position?

6 A Eric Braemer is his name, B-R-A-E-M-E-R.

7 Q What generally, what does Dura-Fibre do?

8 A We make paper boarder. We laminate various
9 grades of rolls of paper together, sheet it, and either
10 dye cut it or don't dye cut it. We have furniture parts
11 that we make for the furniture industry. It's called, we
12 have a line called high strength folding carton, which is
13 basically consumer packaging. And we make like, we have
14 industrial packaging for slip sheets, just things for, you
15 know, heavy shipping, you know, heavy, fragile products.

16 Q You said Dura-Fibre's clients tend to be other
17 businesses?

18 A Correct.

19 Q I want to talk about Dura-Fibre's safety and
20 disciplinary policies. Unless indicated otherwise, you
21 can assume I'm talking about Dura-Fibre's policies as they
22 existed on or around May 2013. Do you understand?

23 A Yes.

24 Q So if I talk about the present tense, I'm really
25 talking about 2013.

1 A Okay.

2 Q Does Dura-Fibre have written disciplinary and
3 safety policies?

4 A Yes.

5 Q Tell me about how Dura-Fibre goes about
6 disciplining it's employees.

7 A Well, if an operator, generally if a supervisor
8 witnesses any type of violation, they have the discretion
9 to do a write-up slip at that point and issue points. If
10 there's any employees report anything that another
11 employee is doing, then an investigation is done. If an
12 employee comes and reports that something happened and
13 it's determined at a later point that they violated one of
14 the plant rules, then a discipline form would be filled
15 out at that point.

16 Then the operator, when the employee is issued a
17 discipline slip, they have the option to accept the
18 discipline as is or to request a meeting with the director
19 of operations to talk about it further, if they have any
20 concerns or disagreements with it.

21 Q So, there are two options, so if a supervisor
22 witnesses or a manager witnesses something, a violation,
23 then they can do a write up, you said?

24 A Correct.

25 Q And issue points?

1 A Correct.

2 Q On the spot?

3 A Yep.

4 Q What kind of violations are you talking about?
5 Are you talking about safety violations?

6 A Could be safety violations, it could be quality,
7 it could be wasting company time, sorry, calling in sick,
8 being late to work are some examples, insubordination.

9 Q And alternately, did you say, so you can issue
10 points on the spot. Were there other ways that points can
11 be issued if not on the spot?

12 A Yes, if there needs to be more investigation, if
13 there's a claim made by another employer if an employee,
14 if you see something and you need to obviously do some
15 further investigation, talk to some other people, points
16 can be issued at a later time after the investigation is
17 complete.

18 Q Okay, and who issues those points?

19 A Generally, the supervisor would issue discipline,
20 but any member of management is capable of issuing
21 discipline.

22 Q Okay, you talked about points. What are you
23 referring to when you talk about points?

24 A Dura-Fibre has a point system for their, for it's
25 discipline. Total number of 24 points at the time is what

1 it would take to terminate an employee. You would have
2 anywhere from four to eight to 24 points based on the
3 severity of the violation.

4 An employee would accumulate points over the
5 course of his tenure with the company. If they went so
6 many months without getting points, they can earn points
7 back. And then obviously once they get to 24 points, then
8 there is a discussion regarding termination.

9 Q And so is it the supervisor who determines how
10 many points are issued for a given violation?

11 A Correct.

12 Q Is there any guidelines for the supervisor to
13 follow?

14 A In the union contract it lays out what all the
15 plant rules are. Each, they're broken down by category.
16 All the four point violations are together, the eight
17 points, and so on.

18 Q Do you have discretion to award fewer than four
19 or more than eight points for a given violation?

20 A Generally, no. It's pretty black and white,
21 what's in there.

22 Q So if you see something, you must award at least
23 four points?

24 A Yes.

25 Q Okay, so when an employee reaches 24 points, must

1 they be terminated?

2 A Generally, that's been the practice, yes.

3 Q It's been the practice, but does any policy
4 require them to be terminated?

5 A I don't know if it's actually a Dura-Fibre policy
6 or if it's just a statement in the union contract that
7 once 24 points is reached termination will be, will
8 continue, or termination will, termination process will
9 start.

10 Q Okay, are points something you think that
11 employees want to avoid getting assigned?

12 A Yes.

13 Q Why?

14 A You get too many and it eventually leads to your
15 dismissal from the company.

16 Q Who determines whether an investigation is
17 necessary, ongoing, excuse me, who determines whether an
18 investigation is necessary before awarding points?

19 A The supervisor should be able to make that
20 determination. Sometimes HR is involved if it's,
21 depending on the circumstances of the incident. Some
22 things are very black and white, some things there's a
23 little bit more involved.

24 Q What's an example of a black and white issue?

25 A Employee calls in sick.

1 Q You mean without a doctor's note?

2 A Correct and comes back the next day and doesn't
3 say that they were in any type of an accident or there was
4 any kind of family emergency or something that would fall
5 under FMLA.

6 Q What falls into the grey area?

7 A Grey area would be say there was some damage from
8 a, there was a wall got damaged by a tow motor, and you
9 can narrow it down to a certain time-frame but there was a
10 couple different operators. And you may have some
11 evidence to suggest that Employee A did it, but you're not
12 100 percent sure. You would need to do, you know, more
13 due diligence in investigating before you could reasonably
14 determine that that employee was responsible for it.

15 Q Does the supervisor get any input from anyone
16 else in the company regarding how many points should be
17 assigned?

18 A At times, yes.

19 Q Okay, what happens in those cases?

20 A Well, the conversation is, the conversation is
21 given or the conversation takes place and ultimately if
22 the supervisor is the one that wants to issue the
23 discipline, ultimately it is normally up to them. But if,
24 again, if HR or the director of ops has any other input
25 that could influence how they proceed with that

1 discipline, that's kind of a case-by-case basis.

2 Q So, who in those cases would determine how many
3 points are assigned to an employee, and if, well, who in
4 those cases would determine whether points are assigned to
5 an employee?

6 A The supervisor should ultimately determine if
7 points are going to be given because the employee always
8 has the option to go to the director of operations for
9 that meeting. If, depending on, again, depending on the
10 incident there's been, there could be a time where you may
11 have two different violations potentially violated here.
12 One could be a four point violation. One could be an
13 eight point. And then there's discussion is okay, do we
14 want to go, do we want to just stick to one violation or
15 go after both of them or one of the two. So those could
16 be the kind of discussions that take place behind the
17 scenes before discipline is actually issued.

18 Q Okay, do you get input from union employees?

19 A Generally, no.

20 Q Can you think of any times where you have
21 received input from union employees?

22 A When we would get to the safety team, if there
23 was an accident investigation where points would
24 ultimately be issued then it's a, kind of a joint effort
25 or a joint decision based between the safety team and a

1 couple of members of the union staff would come in, and
2 they would discuss the accident and determine if any
3 points were to be awarded for that.

4 Q Okay, so is that what happens whenever
5 disciplinary points are issued due to alleged safety
6 violations?

7 A Correct.

8 Q Okay, so in the cases of safety violations, the
9 safety team, I believe you discussed previously, is
10 involved in that discussion, is that correct?

11 A Yes, safety --

12 MR. ZAWADSKY: Counsel, I don't mean to
13 interfere, but I just want to make sure that you
14 understand he's still talking about 2013. He's not
15 talking about currently.

16 THE WITNESS: Yes.

17 BY MR. RUTENBERG:

18 Q Okay. And so you mentioned on the safety team,
19 at the time it was yourself, Luke Benrud, and Jamie
20 Gonnering, is that right?

21 A Yes.

22 Q And you were, for lack of a better word,
23 permanent members at that time?

24 A Yes, primary members.

25 Q Primary members. And then who else served on the

1 safety team?

2 A Every so often, a maintenance manager would come
3 in and be a part of it, and then again, any floor
4 employees would have the ability to come in whenever they
5 would want. If it was a matter of if we had to review an
6 accident, then we would take two people off the floor to
7 represent the union and have their input as well in a
8 situation like that.

9 Q Did management have to take, have to follow what
10 the union folks on the safety committee believed would be
11 the appropriate course of action?

12 A Not necessarily. It would be discussed as a
13 team.

14 Q Okay, and who ultimately makes the decision from
15 the team?

16 A Probably the director, Luke would probably have
17 the final say. But again, we would keep it very, it would
18 be a very, you know, open discussion. If the union
19 employees thought there was something that, you know,
20 wasn't right or unfair, you know, they would speak up and
21 that would all be taken into consideration, but ultimately
22 it's the company's decision.

23 Q Okay, and who determined, how is it determined
24 which or how many union employees, first, how is it
25 determined how many union employees are included in a

1 safety committee meeting?

2 A The union contract states that whenever an
3 accident report was going to be going over that the
4 minimum of two union employees had to present.

5 Q And was it typically two?

6 A Generally, yeah.

7 Q And then who, how was it determined who would,
8 what two employees of these two employees would be sitting
9 in on a particular committee meeting?

10 A Safety meetings were generally at 2:00 o'clock in
11 the afternoon, so we would usually take two of the
12 converting operators because we could shut down one dye
13 cutter machine with minimal other, you know, issues for
14 the rest of the plant. Verus taking two laminator
15 employees, now you have six, you know, three or four other
16 laminator employees that are standing around doing
17 nothing. The laminator is down, so generally the
18 converting crew is the crew that we would take.

19 Q Okay.

20 A Not always, but that's generally how it would
21 work.

22 Q Because it made sense from a production
23 standpoint?

24 A Correct.

25 Q And so those two folks would be, it would just

1 depend on who those two folks happened to be at that given
2 time?

3 A Correct.

4 Q What kind of training did union employees receive
5 to serve on the committee?

6 A That I'm not certain of.

7 Q Okay, do you know of any?

8 A I don't know what type. If there was any
9 training done, it would be by the union stewards or the
10 union, the union leaders.

11 Q But the company did not provide training for
12 employees who served on the safety committee on what's to
13 be expected on the safety committee, for instance?

14 A Not that I know of.

15 Q Okay, what about what their roles are on the
16 safety committee?

17 A They would, I mean, we would explain, Jamie would
18 usually explain if it was people who hadn't been a part of
19 one of these before. She would just explain, okay, we had
20 an accident that happened. I would go over the
21 circumstance of the accident. She would talk about the
22 safety incident form that we were going off of, at the
23 time, and just explain that. And we would go line by line
24 discussing each item and then come to a decision after
25 that.

1 Q What's a safety incident form?

2 A It is what, it's a form that we were using at the
3 time for any type of safety incident. If an accident, in
4 this case, an accident happened, there is different
5 criteria that we would follow. There would be employees,
6 basically there was five or six different line items that
7 we would assign anywhere from, I believe it was one to
8 five points based off of. And then those points would be
9 tallied up and then there was a chart that designated
10 whether there was going to be a, just a sort of remedial
11 training, a verbal warning, written discipline for four
12 points or eight points. That just depends on how many,
13 how high the other point totaled.

14 Q So it's kind of like a rubric?

15 A Basically, yeah.

16 Q Okay, and who developed that rubric?

17 A The company developed it along with the union
18 leaders. The form was devised and the union had input as
19 to some of the aspects of it and then ultimately it was
20 agreed upon by both parties.

21 Q Okay, and what aspects did they have them put
22 into?

23 A Mostly like dollar values. For instance, one of
24 the, if there was a --

25 Q Like physical damage?

1 A Yeah, physical damage, one of the categories on
2 there was employees, did they have the knowledge to, what
3 was their knowledge level? Are they a 20 year veteran,
4 are they, have they been there two months? So there's
5 different points assigned based on how, you know, how
6 experienced the operator. If you're just thinking, okay,
7 should this operator have known better in this case.

8 Another line item was an employee's past
9 history, where there was, you would go back X number of
10 years for one category, you know, zero to six months, six
11 months to one year, one year to three years, and then
12 depending on how many incidents they had in that group, or
13 how many times that it had happened in that series of
14 groups would determine how many points they got. So they
15 would have input and say, well instead of going back zero
16 to six months let's go back zero to a year.

17 Q Sure.

18 A So, that was all hashed out before the form was
19 made final. That's the type of input they would, you
20 know, they would have in that.

21 Q And who determined what the various categories
22 would be?

23 A Basically, the company came up with the form, and
24 then the union had their input on it. But the form
25 itself, the categories, the columns, and all that was

1 devised by the company.

2 Q Okay, and when did that come into be a --

3 A I think that I was still on third shift at the
4 time, so it may have been, it probably sometime in 2012
5 that it came up. That's just, I'm just guessing.

6 Q I understand. So you said that when the two
7 union employees, at least two but typically two union
8 employees, would join the, we'll call it the standing
9 safety team, Ms. Gonnering would show them that rubric.
10 What did you call the sheet?

11 A Safety incident form.

12 Q The safety incident form, is that right?

13 A Yes.

14 Q And this may be a repeat, so I apologize, did the
15 company ever provide training on the use of the safety
16 incident form to safety team members?

17 A Prior to those employees coming in for that
18 particular meeting, I don't believe so, but I'm not 100
19 percent certain.

20 Q Okay, so this could be when they first come in
21 for their first meeting, that could be the first time they
22 worked with the sheet?

23 A Possibly.

24 Q Okay, in fact, it probably was because they
25 probably wouldn't have used this sheet if they weren't

1 part of the meeting, right?

2 A Say that again.

3 Q They wouldn't have use of this sheet if they
4 weren't part of the team.

5 A Correct. They wouldn't see that sheet unless
6 they were part of the meeting, yes.

7 Q Okay.

8 A Or if they were involved in it at some point
9 themselves. If they were, if they were the person that
10 was being investigated in a previous incident.

11 Q Sure, or if they had served previously?

12 A Yes.

13 Q So in the course of our discussion you mentioned
14 a couple of things. You mentioned the labor agreement, is
15 that right?

16 A Yes.

17 Q Is the labor, and the labor agreement, from my
18 understanding, what you said, does it set forth certain
19 safety rules?

20 A Safety rules are generally identified in the
21 company handbook.

22 Q Okay.

23 A There are some safety violations that are listed
24 in the union handbook. Failure to wear protective PPE
25 would be an example.

1 Q What's the difference between a safety violation
2 and a safety rule?

3 A Well, a violation, I guess, a safety rule is
4 something that's put in place, and a violation is a
5 violation of that rule.

6 Q Okay, so if you break a rule in the company
7 handbook, the violation is a violation of something in the
8 labor agreement?

9 A If the labor agreement spells out a violation of
10 a plant rule, then yes, it can be disciplined for that.

11 Q Okay, are there incidences where the safety
12 violations don't spell out the discipline for a safety
13 rule?

14 A Ask the question again.

15 Q Yes, I guess I'm just not totally understanding
16 what the distinction is between the safety violations and
17 the safety rules in the handbook.

18 A You're talking in the company handbook?

19 Q In the company handbook, yes.

20 A Well, the company --

21 MR. ZAWADSKY: This is no question.

22 THE WITNESS: Okay.

23 BY MR. RUTENBERG:

24 Q Can you please clarify what the difference is?

25 A Well, the company handbook will spell out certain

1 work rules, safety rules, and other, just other company
2 rules. And then if the, based off of that, specifically
3 what's in the union handbook is, the violations that are
4 listed in the union handbook can come separately, or they
5 can come from the, the company handbook, or they can be
6 just standing rules alone.

7 For instance, like there may be, just say, a
8 PPE, failure to wear PPE, it may be a union violation rule
9 in the union handbook. It may not specifically, it's
10 something that may not specifically be addressed in the
11 company handbook, but it's in the union handbook so it's
12 an agreed upon rule.

13 Q The union agreement, labor agreement?

14 A Yes, the labor agreement, yes.

15 Q Yes, okay, so there's the handbook, there's the
16 labor agreement. Are there any other sort of sources for
17 disciplinary or safety policies?

18 A Generally, that's it.

19 Q Okay, is the employee handbook part of the labor
20 agreement? And I can clarify if you don't understand the
21 question.

22 A Re-ask the question, please.

23 Q Sure, does the labor agreement make reference to
24 the handbook as being part of the labor agreement?

25 A Yes.

1 Q It does?

2 A At times, yes. I don't know the union, I don't
3 know neither one like the back of my hand but, yes.

4 Q I understand. Okay, are employees given these
5 documents?

6 A Yes.

7 Q Okay, when are employees, and when I say these
8 documents I'm referring to the labor agreement and the
9 company handbook. Is it called the company handbook?

10 A Yes.

11 Q Okay, they're given these documents?

12 A Yes.

13 Q When?

14 A Company handbook usually is given, I'm guessing,
15 at orientation on their first day by human resources. The
16 union handbook is given to them, I believe, once they pass
17 their probation and they get into the union. I could be
18 wrong. The union leaders may give them a contract right
19 off the get-go.

20 Q Okay, I want to talk a little bit about the labor
21 agreement, and what I'm handing you --

22 MR. ZAWADSKY: Are you don't with these two
23 exhibits?

24 MR. RUTENBERG: I should be.

25 MR. ZAWADSKY: Do you want to give them to the

1 reporter?

2 MR. RUTENBERG: Why don't you just hold onto
3 them? There could be a bunch of them and we'll just be
4 swapping back and forth.

5 MR. ZAWADSKY: Okay.

6 BY MR. RUTENBERG:

7 Q What I'm handing you is pre-labeled as Exhibit 6
8 or GX-6. Feel free to take a look at that.

9 (Government's Exhibit No. GX-6 was marked for
10 identification.)

11 MR. ZAWADSKY: Thank you.

12 BY MR. RUTENBERG:

13 Q Let me know when you're ready.

14 A I'm ready.

15 Q What is GX-6?

16 A I'm sorry?

17 Q What is GX-6? What is the Exhibit 6?

18 MR. ZAWADSKY: He wants you to identify it.

19 BY MR. RUTENBERG:

20 A It's the labor agreement between Dura-Fibre and
21 the USW.

22 Q Okay, does it appear to be a full, accurate, and
23 complete copy?

24 A It does.

25 Q And this was, from what dates was this enforced?

1 A October 19th 2009 to June 22nd 2013.

2 Q Okay, and presumably there's a new one?

3 A Yes.

4 Q Okay, how was the labor agreement, do you know
5 how the labor agreement was created?

6 A Discussions between the company and the, the
7 union leaders long ago when the union was first
8 established at Dura-Fibre.

9 Q Okay, were you involved?

10 A No.

11 Q Okay, do you know what the purpose of the labor
12 agreement is?

13 A To govern, to govern how Dura-Fibre, certain
14 aspects of the employee's rights and privileges and
15 expectations while employed with the company.

16 Q Okay, before we talked about the safety team, is
17 that right?

18 A Yes.

19 Q Could you please turn to page 17 of GX-7, I'm
20 sorry, GX-6? And I would just direct your attention to
21 Article 34 health and safety committee. Is that the
22 safety team you're talking about?

23 A Yes.

24 Q So, if we use the term safety team or health and
25 safety committee, you understand what we're talking about

1 here?

2 A Correct.

3 Q Okay, do you know who Lonnie Zeppel is?

4 A Yes.

5 Q Before you were talking about the training, do
6 you know if Lonnie Zeppel was trained on how to be a
7 committee member?

8 A I am not certain.

9 Q Do you know who Mark Woody is?

10 A Yes.

11 Q Do you know if he was trained?

12 A I am not certain.

13 Q Did you ever train him?

14 A No.

15 Q I will refer you to 34.2 on page 17. Do you see
16 that paragraph, 34.2?

17 A Yes.

18 Q It says plant, can you read that for me, please?

19 A Plant health and safety rules as established by
20 this committee are recognized as a part of this agreement,
21 which shall be the duty of the company and the union to
22 enforce compliance with all health and safety rules and
23 requirements.

24 Q Do you know what plant health and safety rules
25 this is referring to?

1 A Just all safety, all safety rules that are
2 identified either by the union contract or the company
3 handbook.

4 Q So, were them rules in the employee handbook, the
5 one you discussed before, were those established by the
6 Health and safety committee?

7 A I don't necessarily know if they were established
8 by the health and safety committee. The company itself
9 would establish rules, and then what the, I'm not sure how
10 things were established long ago when all this was
11 created.

12 Q Okay, well were any rules put into place while
13 you, were any safety rules put into place while you served
14 on the committee.

15 A Any new rules?

16 Q Yes or any updated rules or amended rules?

17 A I don't remember what was new between those
18 periods of time when I was involved.

19 Q So you don't remember if any rules were
20 established or amended?

21 A Not off the top of my head, no.

22 Q Okay, if I could refer you to page 20 of GX-6.
23 What does page 20 show?

24 A The beginning of the plant discipline rules.

25 Q Okay, and does this set forth the point system

1 policy for violations?

2 A It does.

3 Q Okay, now I'm going to, you know, terms like
4 points and disciplinary points. If you don't know what
5 I'm talking about, just please ask me and I'll do the same
6 for you.

7 A Yes.

8 Q Does the company use a particular name for the
9 rules that are assigned that you discussed before?

10 A A particular name?

11 Q Yeah, like are they just called points?

12 A Points, yes.

13 Q So can you read paragraph one under Exhibit B of
14 Exhibit 6?

15 A Any employee who accumulates 24 points for
16 violation of plant rules is just cause for discharge.

17 Q Okay, in your mind, is that required discharge?

18 A For the most part, yes.

19 Q Okay, are there other events that can lead to
20 discharge if the employee has not received 24 points?

21 A I'm just trying to think of an example. In most,
22 in my time, most events that have happened have been able
23 to be tied to the union contract, I guess. If somebody,
24 if somebody, yeah, I mean I've never had this happen, but
25 if somebody just stopped showing up for work because they

1 were in jail or they just took off, I mean, eventually
2 they would be terminated for, you would accumulate a
3 couple of
4 no-call/no-shows and you would get up to 24 points.

5 For the most part, in my experience
6 everything is tied to the point system for termination.
7 I'm sure there are, I'm sure there are occurrences that
8 could happen that haven't.

9 Q So you can't think of any particular occurrence
10 that's not tied to the point system?

11 A Not, not, not right now, no.

12 Q Okay, but there are individual acts that can lead
13 to 24 points, is that right?

14 A Yes.

15 Q And are those all set forth in the agreement?

16 A Yes.

17 Q Where?

18 A Bottom of page 21, group 3 into page 22.

19 Q Okay, can an employee be discharged if they don't
20 reach 24 points?

21 A Generally with this as the criteria, no.

22 Q Can you think of any time where an employee has
23 been discharged without having reached 24 points?

24 A No.

25 Q Okay, so when an incident occurs, whether it be

1 safety, tardiness, et cetera, do the managers seek to tie
2 that incident to some place within the labor agreement?

3 A Generally, yes.

4 Q So, that they may assign points?

5 A Yeah, these rules govern how we assign points and
6 how they're tracked.

7 Q Okay, do you rely on any other documents to
8 determine how to assign points other than that rubric you
9 talked about before?

10 A Other than that, no.

11 Q I want to refer you to page 20 again, paragraph
12 four, excuse me, group one, paragraph four.

13 A Okay.

14 Q What does it say?

15 A Committing an unsafe act, four to eight points
16 with input from the safety committee.

17 Q Okay, what is an unsafe act?

18 A Just an event that a person does that doesn't
19 have regard for safety or a reckless act, reckless
20 behavior.

21 Q Okay, and what do you mean, not regard for --

22 A Just being careless.

23 Q What are examples of careless acts?

24 A Walking across moving conveyors when there's
25 walkways available, not having PPE on, you know, steel

1 toed shoes or hearing protection, eye protection, trying
2 to lift something improperly that's heavier than what
3 you're capable of lifting when there's a hoist available,
4 reckless driving of a tow motor, are just some examples.

5 Q Do you have separate, does Dura-Fibre have
6 separate policies or relating to how folks should lift?

7 A There is, I believe there is a, there is some
8 training on proper lifting technics during orientation.
9 I'm not 100 percent sure of that.

10 Q Are there any guidance documents?

11 A That I'm not sure of.

12 Q Okay, what about on PPE, and PPE, just to be
13 clear is personal protective equipment, correct?

14 A Correct.

15 Q Such as goggles?

16 A Hearing, yes, hearing, earplugs, eye protection,
17 steel toed shoes.

18 Q Okay, is there any training that the employees
19 receive on PPE?

20 A Yes, generally that's at orientation.

21 Q Okay, and are there documents that they are given
22 related to that training?

23 A Yeah, there's video that they usually watch, and
24 then they take a quiz, and then those quiz results are
25 generally, become a part of their personnel file.

1 Q Does an employee, I'm sorry.

2 A And then whenever there's retraining, if there's
3 yearly training or every other year retraining then that
4 happens as well and documentation is kept on that.

5 Q Such as like a fair?

6 A Correct.

7 Q A safety fair.

8 A Yes.

9 Q Okay, and are there safety rules in the employee
10 handbook relating to PPE?

11 A I believe so.

12 Q Okay, what about to lifting?

13 A Lifting, I'm not 100 percent sure what's all
14 spelled out in there.

15 Q Okay, what about say driving?

16 A Like a tow motor? I'm not, I'm not certain what
17 is referenced in the, specifically, in the company
18 handbook in regards to that.

19 Q And then so you said careless, what would
20 reckless behavior be?

21 A Driving top speed on a tow motor around a corner
22 without sounding a horn.

23 Q What's a tow motor?

24 A A forklift.

25 Q A forklift, and are the folks who drive

1 forklifts, are they trained on how to drive a forklift?

2 A Yes.

3 Q And do they have certifications?

4 A There's a training, yeah, they're training by a
5 certified trainer. They have to watch a video, take a
6 quiz, and they have to go through a training process, a
7 training checklist before they're allowed to operate a tow
8 motor, a forklift, on their own.

9 Q So, does the company provide such training?

10 A Yes.

11 Q Or at least pay for it?

12 A Yes, we have in-house employees who do the
13 training.

14 Q Okay, so they would know when they're doing
15 something wrong, is that correct? Or should they know?

16 A They should.

17 Q Okay.

18 A Can we take a quick three minutes or so?

19 MR. RUTENBERG: Absolutely.

20 (Off the record.)

21 MR. RUTENBERG: We're back on the record.

22 BY MR. RUTENBERG:

23 Q Mr. Blair, we were talking about the labor
24 agreement and the term unsafe act, as used in the labor
25 agreement, is that right?

1 A Yes.

2 Q Okay, have employees been trained in the meaning
3 of an unsafe act?

4 A I don't believe there's been any specific
5 training other than knowing what's covered in orientation.
6 There are some unsafe acts I'm sure they have been trained
7 on. Tow motor drivers, for instance, they know the
8 difference between the proper operation and reckless
9 operation. Same with lifting techniques, so it's not a,
10 there are certain situations or certain circumstances,
11 yes, where they're trained on what's safe and what's
12 unsafe.

13 Q Okay, is there anything else you can think of
14 beyond lifting and using a forklift?

15 A Not off the top of my head, as a general rule. A
16 lot of it is just common sense.

17 Q Okay, but are they, and just, you know, to ask a
18 slightly different question, are they trained on the
19 contours of what an unsafe act as used in the agreement
20 is?

21 A There's not that specific amount of training
22 done, no, that I am aware of.

23 Q Is something like bumping your head, is that an
24 unsafe act?

25 A It could be construed as one, if you didn't, if

1 you weren't watching what you were doing.

2 Q Okay, can an act that leads to an employee
3 hurting or injuring themselves not be an unsafe act?

4 A Of course.

5 Q What's an example of that?

6 A If something falls off a shelf and injures an
7 employee, that they have no control over.

8 Q Anything else?

9 A That's about all that I can think of. Just any
10 event where there, it's out of the employee's control that
11 they got hurt. Another employee hits them with a tow
12 motor, that's nothing they initiated. They were the
13 victim in that case.

14 Q So, just to ask the question, is it possible to
15 hurt, is it possible for an employee to commit an unsafe
16 act without hurting himself or someone else?

17 A Sure.

18 Q What's an example of that?

19 A Committing an unsafe act where they don't hurt,
20 if there trying to pick up too much, if a forklift
21 requirement stated a certain amount of pounds and they
22 pick up over that and a forklift starts to tilt forward or
23 it obstructs their view and they almost run into
24 something. I mean, that's considered an unsafe act.

25 Q Okay, have you issued unsafe acts where no one's

1 been hurt, or have you ever issued points for an unsafe
2 act where someone, no one's been hurt or damage has been
3 done?

4 A I may have. I don't remember any, I don't
5 remember all the disciplines that I handed out during my
6 time as a supervisor.

7 Q But can you think of any?

8 A Not off the top of my head, no.

9 Q Okay, have you handed out disciplinary points
10 where it's determined that an employee has committed an
11 unsafe act?

12 A Yes, in the Jacobs case, yes.

13 Q Okay, any other cases?

14 A None that I can remember.

15 Q Okay, has the company, you sat on the safety
16 committee right?

17 A Yes.

18 Q Has the company issued disciplinary points to
19 other people based off of unsafe acts.

20 A I'm not certain. I haven't been, during my time
21 when I haven't been on part of the safety team, I'm not
22 certain.

23 Q But the time that you were on the safety team?

24 A Yes.

25 Q Okay, and where any of those issued in cases

1 where no one was injured or no property damage occurred?

2 A I don't, I don't recall.

3 Q Is it possible, has there been a situation where
4 an employee has hurt himself or herself due to an
5 accident, but no points resulted?

6 A I guess it's possible. I don't recall specific
7 incidence, though.

8 Q Okay, it says in the, it says in the labor
9 agreement at GX-6 that four to eight points with input
10 from the safety committee are --

11 A Yes.

12 Q Right, and you indicated before that once it is
13 determined there is an unsafe act, an employee must get
14 four to eight points, is that correct?

15 A That's how it reads. Based off the safety
16 incident report, though, I believe it says there's, again
17 everything from remedial training, verbal warning. I
18 don't know if verbal warning is for sure on there.
19 Remedial training and then four to eight points depending
20 on how high, how the criteria is met on that form.

21 Q Okay, so just to clarify from before, it is
22 possible for an employee to commit an unsafe act but
23 receive fewer than four points, is that correct?

24 A Based off, if going off of that safety incident
25 report, then I would say yes.

1 Q Okay, is it possible to go more than, get more
2 than eight points?

3 A I don't believe so, I believe eight is the limit
4 on that form.

5 Q Regardless of how egregious the unsafe act is it
6 can't go above eight, is that right?

7 A I'm fairly certain, I mean unless there's a
8 situation where somebody deliberately damages company
9 property with a tow motor, they recklessly drive into a
10 rack and damage equipment, that could be construed, I mean
11 that could be construed as something more than an unsafe
12 act, though, so.

13 Q Right, so it probably wouldn't be listed as an
14 unsafe act?

15 A Probably, yeah.

16 Q Can you think of a time in the, well, yes, can
17 you think of a time or an incident where an employee hurt
18 or injured himself but did not receive points?

19 MR. ZAWADSKY: I'm going to object. I believe
20 that question has been asked and answered.

21 BY MR. RUTENBERG:

22 Q You can still answer.

23 A Not that I can think of off the top of my head.

24 Q How often are employees injured, or is it
25 determined that they're injured?

1 A I mean it runs in streaks. We have good, I mean
2 we have good years and there's years where's there's been,
3 you know, maybe multiple recordables. It just kind of
4 comes in streaks, comes and goes. I'm not involved in
5 that much, late, you know, the last couple years now.

6 Q I'm talking about when you were on the safety
7 committee?

8 A I don't know, we probably had, during that, my
9 time as a team member we probably had some of the better
10 safety numbers we've had in recent years. I know we made
11 a big push for increased, stressing safety and, you know,
12 proper lifting techniques, proper, you know, procedures on
13 the machine to avoid injuries. I know we did have one
14 year, I know we did have one year we were, I don't think
15 we had any recordables all year, that might have been
16 actually 2012.

17 Q Right, to be clear I'm not just talking about
18 recordable. I assume when you say recordable you mean
19 recordable for OSHA purposes?

20 A Yeah.

21 Q I know I work in a OSHA office, but I'm just
22 asking generally speaking injuries that, you know, could
23 be a small little scrape or something that gets, that you
24 guys take notice of?

25 A Yeah, those ---

1 Q How frequently?

2 A Yeah, those happen, I won't say they happen
3 frequently.

4 Q How frequently?

5 A Maybe, I don't know, once every, I don't know I'm
6 just guessing here, maybe once a month, maybe once every
7 two months. So, they come in streaks, I may go, I may
8 have gone three months without filling out an accident
9 report, then I might have a couple in a week. It's just
10 based on it's, there's no real pattern to it

11 Q All right, I want to ask you, I'm going to refer
12 you to GX-7, Exhibit 7. Please take a look, please feel
13 free to review, and let me know when you're ready.

14 (Government's Exhibit No. GX-7 was
15 marked for identification.)

16 A Right.

17 Q What is that?

18 A Dura-Fibre employee handbook.

19 Q Is it a full and accurate complete copy?

20 A Appears so.

21 Q What is its purpose?

22 A To establish company-wide rules.

23 Q Who developed it?

24 A I believe the owners of the company at the time,
25 whether it was Brian Dunsirn or any of the previous

1 owners. I don't know how they've been passed along
2 through some of the ownership changes.

3 Q Was it in force in May 2013?

4 A Yes.

5 Q Can we turn to page nine of GX-7. Can you turn
6 to the safety policy piece?

7 A Okay.

8 Q And start, and read the sentence that starts with
9 Dura-Fibre?

10 A Dura-Fibre is committed to providing a safe work
11 environment ---

12 Q I'm sorry, the second paragraph that starts with
13 Dura-Fibre.

14 A Dura-Fibre has multiple options to choose from.

15 Q I'm sorry, I'll just, Dura-Fibre will provide,
16 you can just start with the Dura-Fibre piece.

17 A The first sentence under safety? Dura-Fibre will
18 provide the proper tools needed to work safely, but it is
19 up to each of us to use these tools in the proper manner.

20 Q What does tools mean there, in your opinion?

21 A Training and proper personal protective
22 equipment.

23 Q And what does the second part of that sentence
24 mean to you, what does up to each of us to use these tools
25 in the proper manner?

1 A Each employee has to actually take their own, you
2 know, hold themselves accountable and take their own
3 responsibility to work safely, and use the equipment that
4 they're given, use the training that they were given, and
5 just generally, you know, common sense be able to move
6 about the plant in a safe manner.

7 Q What do you mean, move about the plant in a safe
8 manner?

9 A Not running, not walking through spilled, you
10 know, water spills or glue, being aware of your
11 surroundings.

12 Q And if you could just turn to page 10, and could
13 you read the second to last full paragraph starting with
14 it?

15 A It is the company's responsibility to provide you
16 with a safe place to work, and to give you the necessary
17 safety training so that you can avoid accidents to
18 yourself or to others.

19 Q Okay, thank you. So, this is once again
20 reiterating the training, is that correct?

21 A Yes.

22 Q And I'm sorry, I cut you off, you can read the
23 next sentence.

24 A It is your responsibility to work safely.

25 Q And the employees are trained, you said, annually

1 at a, is it at a safety fair?

2 A We did have a safety fair that we had for a
3 couple of years, and then the last, probably three or four
4 years they've stopped doing that and they basically, every
5 month there's monthly safety meetings, and then the cover
6 a topic that needs to be, you know it has to, up for a
7 yearly re-training every month.

8 Q When did you start doing that?

9 A The monthly safety meetings?

10 Q Yes.

11 A There was safety meetings in, I want to say
12 probably 2014, about 2015 would be when the monthly safety
13 meetings replaced the safety fair.

14 Q Okay, but what kind of training was provided in
15 2013 and before?

16 A I believe we had a safety fair, where it was just
17 the one day, one day training where all the topics would
18 be covered.

19 Q And what was covered?

20 A PPE, I believe tow motor re-certification for
21 those who worked, or drove on a tow motor forklift, blood
22 borne pathogens I believe was a topic. There was numerous
23 other topics, I don't remember all of them.

24 Q Were there PowerPoints or materials provided?

25 A PowerPoint, yeah, each presenter would take a

1 topic and there would be a PowerPoint or some sort of
2 demonstration and then a quiz at the end of each topic.

3 Q Do you know if Dura-Fibre still has these
4 PowerPoints?

5 A I'm sure they're still somewhere on someone's
6 computer drive.

7 Q What does it mean to work safely, according to
8 this, it is your responsibility to work safely?

9 A Again, just use the tools that were provided to
10 you, be aware of your surroundings, know what's above you
11 and around you and on the floor where you're walking when
12 you're going up and down stairs to not trip when you're
13 coming down or upstairs.

14 Q Can an employee, yes, go ahead.

15 A Yeah, you know not, again, if you're working
16 underneath a machine know that it's above you, so when you
17 stand up and you bump your head you can't blame anybody
18 else but yourself. It's common, a lot of common sense
19 stuff.

20 Q Can an employee work safely but still injure or
21 hurt himself?

22 A I suppose it's possible.

23 Q Why do you suppose that?

24 A Well, I mean if you're working safely and
25 something else happens it's out of, it's something that's

1 out of your control that happens, like I said before if
2 there's, something falls on you, if you're standing in,
3 stringing up a machine and something falls off the top of
4 the machine and hits you, you're working safely as you
5 possibly can but it's something that was out of your
6 control.

7 Q Right, but I said, I'll just re-ask the question.
8 Can an employee work safely but still injure or hurt
9 himself?

10 MR. ZAWADSKY: I think ---

11 MR. RUTENBERG: So, if something falls onto
12 someone, you know, arguable that's not hurting themselves.

13 MR. ZAWADSKY: I'm going to object, asked and
14 answered. I think this is now the third time we're going
15 through this. Answer that question if you can.

16 THE WITNESS: It's possible.

17 MR. RUTENBERG: Okay, can an employee still work
18 safely and be involved in an accident?

19 MR. ZAWADSKY: Objection, asked and answered.

20 THE WITNESS: Yeah, I think I answered it, yeah
21 it's possible.

22 BY MR. RUTENBERG:

23 Q Are these, are those two sentence you read, it is
24 the company's responsibility to provide you with a safe
25 place to work and to give you the necessary safety

1 training so that you can avoid accidents to yourself or to
2 others, it is your responsibility to work safely, are
3 those safety rules?

4 A A combination of safety rules, and I think just
5 common sense rules, too.

6 Q So, do you consider those to be safety rules?

7 A Sure.

8 Q Could you just flip the page. If they are safety
9 rules, why are they not under safety rules on the next
10 page?

11 A The safety rules there's, you can't spell out
12 every single situation in life as a rule. I mean these,
13 these safety rules are specific incidents that are
14 specific examples that have been identified. But you
15 can't categorize everything in life, you can't necessarily
16 categorize common sense, you know, working safely.

17 Q You keep using the phrase common sense. What are
18 examples of accidents that can occur, or injuries that can
19 occur where an individual is not exercising common sense?

20 A There's a big glue spill on the floor and someone
21 goes walking right through it or running through it, or
22 sliding through it and they fall and get injured.

23 Q What else?

24 A Again, working underneath the machinery when you,
25 you're underneath a rack where you know, you've gone in

1 and out of this rack multiple times and then all of a
2 sudden you stand up and bump your head. Or you walk, or
3 you're walking up or down a flight of stairs that you've
4 navigated dozens or hundred of times in your tenure with
5 the employee, or with the company, and you trip on your
6 way down.

7 Q And that's a lack of common sense?

8 A It's just a lack of, it's just carelessness.
9 It's just a lack of coordination.

10 Q Lack of coordination?

11 A If you were more careful, you were watching where
12 you're putting your two feet and you're using railings and
13 you're not trying to run, you know, run down or, you know,
14 navigate down or up some stairs faster than you should.

15 Q And those types of incidents might be an unsafe
16 act?

17 A I believe so, yes.

18 Q Has the company ever provided training on how to
19 go up and down stairs?

20 A Not that I know of.

21 Q I want to refer you to what is the 10th bullet
22 point down, it's the one that's just above the bold and
23 immediately, and it's that bullet point. Can you read
24 that, please, it starts with every.

25 A Every accident, including near misses, must be

1 reported to your supervisor and human resources
2 immediately.

3 Q So, in your opinion what does immediately mean?

4 A As soon as possible after the incident occurs.

5 Q And is that the rule that it needs to happen,
6 well, immediately and so you think immediately and as soon
7 as possible mean the same thing?

8 A Well, if an employee is injured, I mean if
9 immediately is immediately after they walk five minutes to
10 the other side of the plant to go notify, you know, human
11 resources and a supervisor because they weren't in the
12 area at the time, that's as immediate as you can get --

13 Q Okay.

14 A -- or if the supervisor is standing 10 feet away
15 and that immediate is 10 seconds versus five minutes, it's
16 as soon as they can get to the proper individual who they
17 are supposed to report it to. There should be no delays.

18 Q And is that the guidance you've provided to
19 employees?

20 A Yes.

21 Q No delays and immediate?

22 A You have to report, you don't, you can't, you
23 don't wait a day to report an injury, or you don't wait
24 three hours to report an injury when you saw your
25 supervisor 10 times in that same amount of time. That

1 would be the, to me the difference between immediately and
2 a delay, or not immediately.

3 Q What is an accident as this phrase is used in the
4 sentence?

5 A An event or an occurrence where there is
6 potential for, where an individual is injured or there is
7 damage to company property.

8 Q And how do you know that definition? Where is
9 that definition from?

10 A It's just the definition that I know of as an
11 accident.

12 Q Is that the company definition?

13 A If it's defined specifically that way, that's, I
14 believe so.

15 Q And what's a near miss?

16 A A near miss is an incidence or occurrence of
17 something that happens that could result in an injury to
18 somebody or could result in damage, but doesn't.
19 Basically a close call.

20 Q So, a near miss is an incident where no injury or
21 physical damage occurred?

22 A Yes.

23 Q So, for instance, would playing with a knife
24 that, say I'm playing with, say you're playing with a
25 knife and you don't get hurt by it, could that be a near

1 miss?

2 A Could be, if the blade is exposed, you're
3 flipping it around, or yeah, playing with it in a manner
4 outside of how it's designated to be used, sure.

5 Q But that's a near miss?

6 A If you're not injured, yes.

7 Q But if you are injured, it might be an accident?

8 A It's an accident.

9 Q And how is it determined that an injury has
10 occurred?

11 A Usually it's based on what you physically can
12 see, or what an employee would tell you.

13 Q Okay, so what are some of the factors you would
14 consider as a supervisor, as to whether someone was
15 injured?

16 A If somebody is bleeding, if somebody is limping
17 around, if somebody is favoring a body part or extremity,
18 or if they tell me, yeah, I hurt my shoulder.

19 Q So, if an employee feels pain at any moment
20 that's considered an injury?

21 A In my eyes, yes.

22 Q In your eyes. Are the employees, have the
23 employees been trained on that?

24 A I don't know what specific training they got for
25 identifying an injury. Again, it kind of goes back to

1 common sense, an employee knows when they did something
2 and they hurt something. They know if they feel a muscle
3 tweak or a pull or a sprain or something. If they hit
4 their head and their head hurts, they know themselves, I'm
5 not a doctor, I can't diagnose an employee's, whether
6 they're injured or not. Sometimes I am going off of
7 their, their opinion on what ---

8 Q Right, so in your life have you ever bumped an
9 elbow?

10 A Of course.

11 Q And did the pain go away in a second, or very
12 quickly?

13 A Sometimes. Sometimes it stuck around for a
14 while.

15 Q Okay, and the times where it went away quickly
16 did you consider yourself injured?

17 A For a brief moment, probably, if I thought about
18 it that way.

19 Q So, any time someone feels, have you ever bumped
20 your elbow and felt no pain?

21 A I'm sure.

22 Q Okay, would that be an injury?

23 A I didn't feel any pain, I guess I didn't notice
24 anything different, or if I didn't, if it didn't
25 inconvenience me or it didn't throw, you know, throw a

1 wrench in my day in any way, even for a split second, I
2 would probably say no.

3 Q And again, though, since you're the one meting
4 out and doing investigation, did you ever provide any
5 training to the people who worked under you on, sort of
6 that definition of what injury might be?

7 MR. ZAWADSKY: Object to form of question.
8 Answer the question if you can.

9 THE WITNESS: Not that I specifically remember.
10 BY MR. RUTENBERG:

11 Q So, you understand the idea of an injury is
12 somewhat subjective. Do you believe that an injury can be
13 subjective?

14 A I guess it's possible, I mean everybody has their
15 own tolerance for what they think, for their bodies, I
16 mean they have their own opinions, too. So, I guess it is
17 very objective.

18 Q Subjective.

19 A Subjective, I'm sorry.

20 Q That's okay. Now, is an injury actual damage to
21 the body?

22 A I think just any time where somebody feels
23 something pain. I mean, it could, like you said it could
24 be a pain that goes away in five seconds, or it could be
25 something that leads to surgery. I think it's all

1 considered an injury.

2 Q If an employee bangs his head and you see it, how
3 would you consider whether that was an injury or a near
4 miss?

5 A It would be an injury because they, I physically
6 saw them bang their head. They didn't just almost bang
7 their head, they actually banged their head, and I guess I
8 would question them, are you okay, and if they're,
9 generally when you bang your head there's some sort of
10 pain you feel.

11 Q But what if they, go ahead.

12 A If they're, if they don't, I guess I'd question
13 them, ask them if they're okay, and if they're, you know,
14 yeah, I got a little bit of a bump here or it hurts or
15 whatever, then would initiate an accident report from
16 there, I guess.

17 Q What if they say they're okay?

18 A Well, they may say they're okay, but that still
19 might mean they, yeah, did you hurt yourself? Yeah, but
20 I'm okay, okay, well that's different than if, if they
21 bang their head and now they're bleeding. But I guess
22 that would have to take, going to have to be the situation
23 where, a lot of times again you're going off of what
24 they're telling you.

25 Q So, is there a circumstance where an employee

1 might bang their head, you would witness it, and they say
2 I'm fine, I'm not hurt and you wouldn't open up an
3 investigation?

4 A I don't know, if I was put in that situation, I
5 don't know.

6 Q Well ---

7 A I haven't had that type of situation

8 Q Well, if you don't know how do, let me ask you
9 this. If you don't know how you would react, how does the
10 company expect employees to know how to react?

11 MR. ZAWADSKY: Object to competency of witness to
12 answer the question. Object to form of question. Answer
13 the question if you can.

14 THE WITNESS: The company has to trust that the
15 employee is competent enough in, I guess for lack of a
16 better term, life, to know if you hit your, it's common to
17 me, it goes back to the common sense where if you're, if
18 you hit your head you know yourself whether, whether
19 you're hurt or not.

20 BY MR. RUTENBERG:

21 Q Or whether you're injured?

22 A Or whether you're injured, whether it was, it
23 doesn't even have to be a head, just you're trusting that
24 your employees are, again, just competent individuals that
25 you don't, just know some of the stuff through life.

1 Q If you could please turn to page 12 of GX-7,
2 thank you very much. Could you just read the first three
3 sentences of the top piece that says on the job injuries?

4 A Every injury, no matter how slight, must be
5 reported immediately to a supervisor and human resources,
6 and an incident report must be completed. If medical
7 treatment is necessary a company leader will arrange it
8 for you promptly. Keep going?

9 Q Yes, please, the next sentence.

10 A Corrective action may be taken if the incident is
11 not reported promptly or a safety policy has been
12 violated.

13 Q Now, what is corrective action?

14 A Just a discipline.

15 Q So, we're talking about like the disciplinary
16 points?

17 A Points, points, yeah.

18 Q Or coaching?

19 A Right up, yeah or some type of verbal talking to
20 or written warning or something along those lines.

21 Q It says corrective action may be taken if the
22 incident is not reported promptly or safety, or a safety
23 policy has been violated. I'll just ask again, but given
24 this language must there be corrective action taken if
25 someone is not, if an employee does not promptly report an

1 injury?

2 A If it says may be taken, that's not an absolute,
3 or it doesn't specify that you have to.

4 Q Have there been instances where an employee, and
5 let me just ask you, who needs to report, how does a
6 report go? It says immediately, an injury needs to be
7 reported immediately. So, who needs to be reported to?

8 A The employee should report it, as it says,
9 immediately to a supervisor. If it's a, you know, if it's
10 an employee and a lead operator is there you can report it
11 to the lead. But regardless, between the two of them it
12 needs to get reported up the chain to the supervisor.

13 Q Okay.

14 A And eventually to HR, which I would, as the
15 supervisor I would do the notifications of HR, unless HR
16 happened to hear about it before me.

17 Q And what if the supervisor is unavailable or
18 something like that?

19 A Then they should go to human resources or go to
20 any other member of management, or try to contact the
21 supervisor or the lead. Again, if the lead is, if it's
22 third shift and there's nobody around the lead is in
23 charge of the, of the machine, the employee would report
24 it to the lead, and then the lead would notify the
25 supervisor at the, you know, next most available time or

1 the most convenient time.

2 Q So, once it is known an injury occurs, somebody
3 must be verbally made aware of that injury that day,
4 correct?

5 A Yes, generally before the end of their shift is
6 when it has to be, is when it has to be, no I'm sorry, let
7 me take that back, that's the accident report that has to
8 be filled out before the end of the shift. The actual
9 reporting of the injury, again, immediately or as close to
10 immediate as possible, given who is available at the time.

11 Q So, we're talking a little bit about accident
12 reporting. Would you consider this to be accident
13 reporting?

14 A Yes.

15 Q Does Dura-Fibre have an accident reporting
16 policy?

17 A Yes.

18 Q What is its purpose?

19 A Obviously to, we're legally bound to report all
20 work place accidents. Obviously the accident serves as
21 a, the investigation takes place when a, the cause of the
22 accident has occurred sometimes they bring to light
23 policies or procedures that need to be changed.

24 Q I'm going to refer you to GX-9, or Exhibit 9.
25 Can you take a moment to look at GX-9. What is GX-9?

1 (Government's Exhibit No. GX-9 was
2 marked for identification.)

3 A Accident reporting investigation plan for the
4 company.

5 Q And is this a full, accurate and complete version
6 of the plan that was revised on January 23rd, 2013?

7 A It appears so.

8 Q Do you have any reason to believe it's not?

9 A No.

10 Q Is this the version of the plan that was in force
11 in May 2013?

12 A Yes.

13 Q For how long prior to this did Dura-Fibre have an
14 incident plan with this, excuse me, let me, before you
15 were talking about near miss and accidents, correct?

16 A Yes.

17 Q Are those discussed in the accident reporting
18 investigation plan?

19 A They are.

20 Q For how long prior to January 23rd, 2013 did
21 Dura-Fibre have an incident reporting plan with this near
22 miss accident definition?

23 A I'm not certain of that.

24 Q Has it been there since you were there?

25 A I believe so.

1 Q And that was 2009?

2 A 2009, yeah. I don't recall specifically when
3 those, when verbiage changed or when that happened or
4 verbiage added.

5 Q Can you estimate how many years prior to 2013?

6 A I can go back, three-and-a-half years that I've
7 been here, prior to that.

8 Q Okay.

9 A That I recall.

10 Q Whose responsibility is it to enforce this plan?

11 A All members of management. Primarily the
12 supervisor enforces the safety rules, but the human
13 resources, again any member of management who sees any
14 type of safety violation can, has the authorization to act
15 on it.

16 Q So, it was your responsibility in part?

17 A Primarily, yes.

18 Q And do you know who put together this plan that
19 was revised on January 23rd, 2013?

20 A Not specifically, no.

21 Q Do you have any ---

22 A Jamie Gonnering may have been involved in
23 devising this, or it may have been before her time and she
24 inherited it when she came on to the company. I'm not
25 sure when exactly this policy came into play.

1 Q Do you know what 29 CFR 1904 is, at the top?

2 A Not off the top of my head, no.

3 Q So, on the fourth bullet point, can you read the
4 fourth bullet point on the first page?

5 A Safety coordinator and the supervisor must be
6 notified of the accident or near miss immediately. The
7 phone list is posted on the bulletin boards at the safety
8 work cell locations.

9 Q And if you could please turn the page and look at
10 the third bullet point down. I'm sorry, second bullet
11 point down.

12 A The lead operator?

13 Q Yes.

14 A The lead operator will notify their supervisor as
15 soon as possible after an accident or near miss occurs.
16 If there is not a supervisor on duty, the lead will call
17 the supervisor at home.

18 Q And that's kind of what you were talking about
19 before, is that someone needs to call at home if an injury
20 occurred?

21 A Correct.

22 Q And so before we talk about accident and near
23 miss, are these the definitions you were talking about
24 before?

25 A Yes.

1 Q And are employees provided this plan?

2 A Yes, this comes out at orientation.

3 Q You mean when they first start?

4 A Yes.

5 Q What happens when a plan is revised, when are
6 employees provided a new plan?

7 A Once a revision is made then there should be an
8 additional training period, or an additional training
9 session with them where they go over with the employees
10 what the changes have been.

11 Q Okay, so looking back at those definitions of
12 accident and near miss, do you see where I'm talking
13 about?

14 A Yes.

15 Q That's page, it's listed as DURAFIBRE00158 of
16 Exhibit 9. So, we have the definitions of accident and
17 near miss, can you just read me the official definition of
18 accident?

19 A Any occurrence that led to physical harm or
20 injury to an employee, and or led to damage of company
21 property.

22 Q Is there a difference between physical harm or
23 injury?

24 A I guess not, really, not in my eyes.

25 Q Are employees trained on what physical harm is?

1 A I don't believe, again, it kind of falls back
2 into the, there's, you know if you're hurt, you know if
3 you hurt something or not. There's no specific, again we
4 can't go and define everything in life. Some things are,
5 there's assumptions made that people understand what some
6 of these definitions are from learning them as they grow
7 up through life.

8 Q So, as far as enforcement though, did Dura-Fibre
9 take a different, did Dura-Fibre distinguish whether
10 physical harm or injury occurred during enforcement of its
11 policies?

12 A Say that again.

13 Q Well, there's two words here, it says any
14 occurrence, I understand we already talked about injury
15 and how somebody can recognize or can't recognize if they
16 have an injury, but before we didn't talk about physical
17 harm. Because it says any occurrence that led to physical
18 harm or injury. Is there really any distinction in the
19 way Dura-Fibre treats physical harm versus injury?

20 A I wouldn't look at it any differently, it's just
21 ---

22 Q As someone who sits on the safety team you
23 wouldn't have looked at it differently?

24 A It just happens to be that's the wording that's
25 in place. But to me physical harm, injury that's, it's

1 the result of an accident if somebody has some type of,
2 something happened to them that, like I said, it, out of
3 the norm. They felt something pull and tweak or hurt.

4 Q So, I just want to be clear. So, as a matter of
5 enforcement, when you were enforcing the policies, or
6 somebody got hurt there wasn't, you did not distinguish
7 between injury or physical harm, correct?

8 A No.

9 Q Now, I want to go back a second. Is the physical
10 harm or injury, and is it okay if I just use the term
11 injury to describe physical harm or injury, since that
12 seems to be how ---

13 A Sure.

14 Q -- that seems to be how the company seems to use
15 that term.

16 MR. ZAWADSKY: Object to form. Object to
17 statement. I guess there was no question.

18 BY MR. RUTENBERG:

19 Q Is the injury the act that leads to something
20 painful, or is the thing that might be painful? Do you
21 understand the question?

22 A No.

23 Q So, if an employee bends an elbow.

24 A Yes.

25 Q That might not hurt at all, in fact I just banged

1 my elbow, that did not hurt at all.

2 A Okay.

3 Q If I did that 40 times harder that might hurt, it
4 might fracture myself.

5 A Yes.

6 Q Is it the fracture that is the injury, or is it
7 the bumping that is the injury?

8 A Well, the fracture itself is the, what the
9 diagnoses is going to be. But before an employee would
10 know that, they would look at it and say I'm injured, I
11 don't know to what extent yet but I'm injured.

12 Q And similarly, with the phrase unsafe act, can
13 bumping your elbow be an unsafe act?

14 A If you're doing it intentionally, sure.

15 Q Okay, well what if you're not doing it
16 intentionally? What if, I mean we're not, what if you,
17 I'm assuming most people don't intentionally bump their
18 elbows.

19 A Again, if they're ---

20 MR. ZAWADSKY: Again, object to form. We're
21 continually going through speculative questions throughout
22 this deposition. Answer the question.

23 THE WITNESS: If somebody is aware of their
24 surroundings and they know what surrounds them and
25 they're, this accident happens I can consider it unsafe,

1 yes.

2 BY MR. RUTENBERG:

3 Q If they lightly bump their elbows would you
4 consider that an unsafe act?

5 A If there's no injury, probably not.

6 Q But if there is an injury it would be considered
7 an unsafe act?

8 A Possibly. I mean, again if it, again you just,
9 you're, to me the employee has the accountability again, I
10 guess it all goes back to employee needs to be aware of
11 their surroundings, and navigate their surroundings to the
12 best of their ability.

13 Q Do you think it's important for employees to know
14 these distinctions between, do you think it's important
15 for employees to know the distinction as to whether a ---
16 strike the question. Do you believe that being able to
17 distinguish among an injury, a physical harm, a near miss
18 or nothing at all is an important skill for employees to
19 know at Dura-Fibre?

20 A For employees, sure.

21 Q Why?

22 A So they can, well, at least in a supervisory role
23 you need to know the difference so you can investigate
24 accordingly and note, you know, to document it
25 accordingly.

1 Q All right, for the supervisors, but what about fo
2 the non-supervisors?

3 A Yeah, I think that an employee needs to know
4 that, what, you know, the result of their actions, what
5 that ultimately means if it's something they, if it's
6 something that they do that has a negative effect they
7 need to know whether they need to report it or not.

8 Q Right, but I don't know if that answered my
9 question so I'm just going to ask again, because I didn't
10 quite understand the answer, I don't think it answered it.
11 Would you agree that being able to distinguish between an
12 injury, a physical harm, a near miss or nothing is an
13 important skill for employees to know?

14 MR. ZAWADSKY: Object, asked and answered.
15 Answer the question if you can.

16 THE WITNESS: Yes.

17 BY MR. RUTENBERG:

18 Q And why, and I'll be, and I'll be ---

19 MR. ZAWADSKY: Object, object to asked and
20 answered.

21 MR. RUTENBERG: -- talking about non-management
22 employees.

23 MR. ZAWADSKY: That's fine, object to asked and
24 answered.

25 THE WITNESS: Yeah, they need to know the

1 difference between if I, did I hurt myself or did I not,
2 what's the difference between an accident and a near miss.
3 They still have to, sorry, they still need to report it
4 but they should still know the difference, just that's
5 their, what the expectation of, you know, is of them,
6 their employment.

7 BY MR. RUTENBERG:

8 Q Right, and knowing those differences is ---
9 strike that. Can you read the next paragraph, excuse me,
10 next bullet point that begins with any employee after near
11 miss.

12 A Any employee who reports a near miss by the end
13 of their shift will not receive any disciplinary action.
14 If a near miss is reported by someone other than the
15 employee involved, and or reported by the employee
16 involved but not by the end of their shift, disciplinary
17 action may be enforced.

18 Q What does that mean?

19 A It means exactly how it's spelled out.

20 Q So, if a near miss occurs but it's reported
21 before the end of the shift, an employee will not be
22 subject to disciplinary action?

23 A That's what it says.

24 Q And is that who that, I say that's what it says,
25 but is that how Dura-Fibre acts?

1 A Yes, a near miss, if there's no injury that
2 occurs it's a near miss. There is no disciplinary action
3 that's going to be taken.

4 Q And again, the supervisor determines whether the
5 injury occurred, correct?

6 A Well, they're taking, I mean they're, sometimes
7 they're taking what is told to them by the employee, too.

8 Q Right.

9 A Because again, we can't diagnose, we can't
10 diagnose an injury. We're going off of, again, a
11 combination of what we see and what we're told.

12 Q But ultimately that is what your, what a
13 supervisor goes off of, right?

14 A Yes.

15 Q And ultimately it's a supervisor who makes the
16 determination, right?

17 A Yes.

18 Q Can an employee receive disciplinary points if he
19 reports an accident before the end of the shift?

20 A If an accident, the accident would go to the
21 safety committee and we would go over the safety incident
22 form, and if like we explained earlier, if the criteria
23 are met, if enough points are accumulated to warrant some
24 type of discipline, then yes.

25 Q But again, the only difference between an

1 accident and a near miss is an employee, is if an employee
2 receives physical harm or injury, correct?

3 A Yes.

4 Q And please understand, I also understand that
5 we're also talking about damage to company property, but
6 that's not what this case is about.

7 A Yes.

8 Q So, we're not going to be focusing on that.

9 MR. ZAWADSKY: That's not a question.

10 BY MR. RUTENBERG:

11 Q So, the same act can lead to an accident, or can
12 the same act lead to an accident or a near miss depending
13 on whether the person is injured or physically harmed?

14 A Sure.

15 Q So, whether disciplinary, is it true then whether
16 disciplinary points may be given out for a particular act
17 that is reported during the same shift is dependent upon
18 whether an employee received an injury or physical harm
19 from that act?

20 A Yes, because that would constitute, that's what
21 would define the accident which would lead to the accident
22 report, which would lead it to the safety team and the
23 safety incident report being filled out.

24 Q And that's regardless, though, of what the act
25 itself might be, correct?

1 A Correct.

2 Q When an employee reports an incident, whether
3 it's a near miss or an accident does the report increase,
4 all things being equal, that the chances that a supervisor
5 will open an investigation into the incident?

6 A Yeah, all near misses and accidents are
7 investigated.

8 Q If reported?

9 A If reported, correct.

10 Q So, therefore, just to be clear, if an employee
11 reports an incident, regardless of whether it's a near
12 miss or an accident, it will increase the chances that a
13 supervisor will open investigation, correct?

14 A Correct.

15 MR. ZAWADSKY: Object, asked and answered. Go
16 ahead.

17 THE WITNESS: Correct.

18 BY MR. RUTENBERG:

19 Q And does opening investigation increase the
20 chances an employee, all things being equal, receives
21 disciplinary action, compared to not opening an
22 investigation?

23 MR. ZAWADSKY: Object to form of question.

24 Answer the question if you can.

25 THE WITNESS: If it's determined that, again if

1 it's determined by the safety team that discipline is
2 warranted, then yes.

3 BY MR. RUTENBERG:

4 Q When is an employee supposed to report an injury
5 if he does not realize he was injured until after a shift?

6 A I would guess the answer as soon as possible
7 after realizing that. If it's 9:00 o'clock at night
8 you're not necessarily going to call anybody and bother
9 them at home, maybe, I mean unless it's a, something that
10 you're now all of a sudden, three hours later you're going
11 to the hospital for. Then I would make a point to call
12 down to the plant and talk to somebody who can relay that
13 message to a supervisor, human resources, or the next
14 morning if it's, again it just depends upon the severity
15 of the injury I would say.

16 If it's something where you're getting
17 medical treatment for, then the sooner the better. If you
18 don't realize it at the time you can't, you can't report
19 something that you don't realize happened at the time.
20 But if it's three hours later, that's I guess when the
21 injury is first noted, and then it falls under the, you
22 should call down to the plant, or time of day makes a
23 difference, too.

24 Q Okay, walk me through what you as a supervisor
25 are supposed to do if you receive a report of an incident?

1 A First I would make sure that the employee filled
2 out an accident report. The accident report is generally,
3 they fill out a portion of it. Technically the accident
4 is supposed to be reported to the lead, the lead would
5 sign the accident report and turn it into me. At that
6 point I would bring it to, generally I would bring it to
7 human resource's attention. If they weren't around I may
8 just start the investigation right away.

9 The investigation would be, I would obviously
10 look over the report first, try to paint a picture as to
11 what I think happened. If there's any witnesses involved
12 I would generally go out to the scene of the accident,
13 have the employee walk me through what they were doing,
14 what positions they were in. If there's any witnesses I
15 would ask them what did they see, and then I would take
16 all that in consideration to, you know, make a
17 determination whether, was this an unsafe act or not. The
18 report would then be turned in to human resources.

19 Q Where does the safety committee come into play
20 here?

21 A The safety team would follow generally at the,
22 again, at the next safety meeting. It could be a day
23 later, it could be a week later, depends on again the
24 timing of it all. Once it's determined that if I felt
25 that an unsafe act was committed, that's what would go in

1 front of the safety team, or the safety team. We would
2 talk, I guess whether or not an unsafe act was committed
3 we would still talk about the accident. Because again, an
4 accident can possibly warrant some type of policy or
5 procedure change or whatever.

6 Q Make it safer?

7 A Right. But if an unsafe act was, in my opinion
8 there was an unsafe act, then that's where the safety
9 incident form would follow.

10 Q So, when the safety committee is involved, it's
11 already been determined by you or another supervisor that
12 an unsafe act occurred, correct?

13 A Yes.

14 Q And then it is the safety committee's job, is it
15 the safety committee's job to then determine how many,
16 what type of discipline if any the employee will get?

17 A Yes.

18 Q Based off there being an unsafe act?

19 A Yes, based off that, the criteria on the form.

20 Q Before you indicated that an employee who did not
21 realize he was hurt, or she was hurt or injured during the
22 shift should report the, the injury or physical harm the
23 next day or later that night, depending upon the time and
24 the severity of the injury, is that correct?

25 A Yes.

1 Q Does that run afoul of the written policy;
2 however, of Dura-Fibre that all incidents need to be
3 reported immediately?

4 A Well, it's a grey area because if you don't, if
5 you don't notice an injury you can just do something that
6 you normally do every single day. You're lifting, you're
7 lifting a pile of sheets off of a pallet into a dumpster,
8 you do it every day multiple times a day, and so you don't
9 think anything of it. You don't feel anything at that
10 particular time when you did that, but all of a sudden
11 four hours later you feel, oh, now I feel like I may have
12 given myself a hernia. You don't know it at the time so
13 you can't, you can't hold anybody accountable for that at
14 the time when they don't realize when they have done it.

15 Q So, in such a case an employee would not get
16 disciplinary points for late reporting?

17 A In that case I would not report any, I would not
18 discipline anybody for late reporting when it, you don't
19 realize it at the time. There's been times, and I can't
20 think of any specific examples, but I know there's been
21 times where an employee has, they've come to me and said,
22 hey, I got hurt, I'm not sure, I think it happened
23 sometime last night on my shift, I'm not sure the exact
24 time, I don't remember what I was doing, but I think it
25 happened last night. Those are more grey areas because

1 there's been times, you know, there may have been the time
2 where they've gone home that night, so you don't really
3 know, well, did this really happen at work or did it
4 happen at home. So that's why we stress to them to report
5 these things, you know, as soon as possible.

6 But again, going back to my other example.
7 If you're lifting up some sheets and you don't notice
8 anything out of the ordinary at the time, but then the
9 next day you feel, you think it happened from that, you
10 know, from the day before, you can only, you can't, I
11 wouldn't, again I wouldn't discipline somebody for not
12 realizing it at the time.

13 Q That they were injured?

14 A That they were injured.

15 Q Right.

16 A The symptoms may not appear right away.

17 Q Are you doing okay, do you need a restroom? I
18 was thinking we would do lunch at maybe about 12:15.

19 A Okay.

20 Q Are you hungry?

21 A I'm fine right now.

22 Q And if you want to plow through and get done
23 earlier, we can do that, too. It's up to you.

24 MR. ZAWADSKY: Can we take a five or 10 minute
25 break right now?

1 MR. RUTENBERG: Okay.

2 MR. ZAWADSKY: How much longer do you think
3 you're going to go?

4 MR. RUTENBERG: There's still some time, so if
5 you could just leave, keep it to five minutes, I'd
6 appreciate that, thank you.

7 (Off the record.)

8 MR. RUTENBERG: back on the record.

9 BY MR. RUTENBERG:

10 Q We were discussing what you do as a supervisor
11 once an incident is reported to you, whether it's a near
12 miss or an accident. Do you determine if treatment is
13 required, medical treatment after an injury is reported?

14 A Yeah, physically if I can, if I can, physically I
15 see there is reason for medical treatment than yes. Or
16 I'll take, again I'm going off of what the employee is
17 telling me.

18 Q If I could refer you to the next page on GX-9,
19 it's listed as DURAFIBRE00160, excuse me, yes, 160. Can
20 you read the sentence that begins with our?

21 A Our company does not discriminate against
22 employees for.

23 Q And just the next bullet point.

24 A Reporting a work related fatality, injury or
25 illness.

1 Q What does that mean?

2 A It means that if somebody actually reports an
3 injury they can't be, it can't be held against them for
4 reporting it.

5 Q And to be clear, a near miss and an accident can
6 arise out of the same underlying action, correct?

7 A Correct.

8 Q The only difference being whether a physical harm
9 or injury occurred?

10 A Correct.

11 Q So, when an employee reports a near miss they're
12 not injured, correct?

13 A Correct.

14 Q And if they report that near miss, regardless of
15 what the underlying action is, they will not receive
16 disciplinary points, is that right?

17 MR. ZAWADSKY: Object to form of question.

18

19 BY MR. RUTENBERG:

20 Q Is that right?

21 A Correct.

22 Q Okay, and you understood the question, right?

23 A Yes.

24 Q However if the same incident, if the same action
25 occurs, the same underlying action, but that employee

1 happened to have been injured by that action, they could
2 receive disciplinary points if reported during the same
3 day, is that right?

4 A They couldn't from actually reporting it. They
5 could from the actions that they took.

6 Q But the only difference between the two types of
7 actions, the two different types of reports, is whether
8 the employee was injured, is that right?

9 A Yes.

10 Q Do you not see that as discrimination?

11 MR. ZAWADSKY: Object. Object to competency of
12 witness to answer the question. Object, argumentative.

13 MR. RUTENBERG: You enforce these rules, right?

14 MR. ZAWADSKY: Let me finish. Object,
15 argumentative.

16 MR. RUTENBERG: You enforce these rules, right?
17 And I disagree on the argumentative.

18 MR. ZAWADSKY: Doesn't matter, counsel, I have a
19 right to make an objection. Do you understand that, you
20 understand that?

21 MR. RUTENBERG: You don't need to raise your
22 voice to me.

23 MR. ZAWADSKY: Yes, I do. Apparently you are
24 telling me what I can do and what I can't do, and I resent
25 that, take strong issue with that.

1 BY MR. RUTENBERG:

2 Q Okay, I'm going to continue with my deposition
3 now. You helped to enforce this policy, is that correct?

4 A Yes.

5 Q So, and as a supervisor was it your job to
6 understand what the company's policies were?

7 A Yes.

8 Q Do you believe, being someone who had to
9 understand the policies and to enforce them, that
10 retaining the ability to assign points for an incident
11 that occurred on the same, for an incident that was
12 reported to you, based solely on whether an employee was
13 injured or physically harmed, discriminates against an
14 employee for reporting an injury?

15 A No.

16 Q Okay, why not?

17 A I don't believe it does.

18 Q I know you don't believe it does, but why not?

19 A It's difficult to articulate a reason.

20 Q As it is difficult for you to articulate a reason
21 as to why that's not discrimination, do you think
22 employees may be dissuaded from reporting an act that
23 related to, that gave rise to an injury if they know they
24 can get disciplinary points for that?

25 MR. ZAWADSKY: Object to competency of witness.

1 Answer the question, answer the question if you can.

2 THE WITNESS: They're not, the discipline is for
3 not reporting an accident. They don't ever get
4 disciplined for reporting an accident. There may be,
5 again as we've talked about, there may be discipline that
6 comes out of the result of what they were doing when the
7 accident happened. But just the sheer reporting or not,
8 the sheer reporting of it alone is not a disciplinable
9 offense. If they don't, if they don't report it that's
10 where the problem happens.

11 BY MR. RUTENBERG:

12 Q Right, but in this situation we're talking about
13 reporting it.

14 A Yeah.

15 Q But the only way to actually get that discipline,
16 as you've said before is, regardless of whether the act is
17 the same, is whether they're actually injured?

18 A If it's determined ---

19 MR. ZAWADSKY: Object to form of question.

20 Answer the question.

21 THE WITNESS: If it's determined by the safety
22 committee that an unsafe act was committed, then yes, it's
23 possible.

24 BY MR. RUTENBERG:

25 Q But if they reported it and were not injured, and

1 an unsafe act occurred, they were not going to get
2 disciplinary points, right?

3 A If they, say that again?

4 Q If an unsafe act, if that same unsafe act
5 occurred, whatever it may be, but the employee, and no
6 employee was injured given rise from the unsafe act, they
7 would not receive disciplinary points if reported on the
8 same day, correct?

9 MR. ZAWADSKY: Object to form of question.

10 THE WITNESS: Please repeat that one more time.

11 BY MR. RUTENBERG:

12 Q You just testified that if there was an unsafe
13 act that was reported on the same day and ---

14 A The unsafe act isn't ---

15 Q Excuse me, if there was an accident that was
16 reported on the same day, I apologize. If an accident was
17 reported on the same day, so if somebody was injured or
18 physically harmed in a circumstance, and it was determined
19 there was an unsafe act, they could receive disciplinary
20 points, correct?

21 A Correct.

22 Q However, if an employee reported a near miss that
23 he was not injured, but there was still the same unsafe
24 act determined, they would not receive disciplinary
25 points, correct?

1 A Correct.

2 Q Okay. All right, I want to talk about Tim Jacobs
3 now. Do you know who Tim Jacobs is?

4 A I do.

5 Q Who is he?

6 A He is a former employee of Dura-Fibre.

7 Q And he made the complaint? I'm not asking you to
8 make any legal conclusions or factual, but all right, let
9 me, your understanding is that this, this litigation, is
10 it your understanding that this litigation gave rise
11 resulting from Tim Jacobs at some point complaining to
12 OSHA?

13 A Yes.

14 Q What kind of work did he do?

15 A He was a laminator, lead operator.

16 Q And as laminator, lead operator what was his,
17 what were his responsibilities?

18 A He was responsible for the overall production of
19 the laminator, overseeing the employees, making sure they
20 were doing their individual jobs. He would fill in for
21 employees when they were sick or at a lunch break.

22 Q Did you work with him?

23 A Yes.

24 Q Were you familiar with his work?

25 A Yes.

1 Q Were you his supervisor?

2 A Yes, I was a, I was subordinate of his when I was
3 on the machine, and then became a supervisor after I was
4 promoted.

5 Q Okay, so you were a subordinate and then became
6 his supervisor?

7 A Yes.

8 Q Was he a good worker?

9 A Overall I believe so, yes.

10 Q What do you mean overall?

11 A He had a few, I mean there were a few, you know,
12 attendance issues and he had some, every once in a while
13 he'd get, you know, kind of an attitude. But overall as
14 an operator, he was a very good operator.

15 Q Okay, was he a good employee?

16 A Overall I believe so. I mean he had some, again
17 he had some issues where he accrued points throughout his
18 tenure there, obviously which is why we're here, part of
19 the reason. But overall as just an employee doing his job
20 on the machine, yes, he was a good employee.

21 Q Was he well liked at Dura-Fibre?

22 A Overall I think so.

23 Q Did you have any problems working with him?

24 A Generally, no. He always did what I asked him.

25 Q And he was terminated, correct?

1 A Yes.

2 Q On May 23rd, 2013?

3 A Yes.

4 Q Why?

5 A He accumulated 24 points.

6 Q Was he terminated for any other reasons?

7 A No, once again, as we stated earlier, once you
8 get 24 points its grounds for termination, and the
9 decision was made to go through with the termination once
10 he received his last write up that got him to four points,
11 24 points, I'm sorry.

12 Q Yes, I understand, thank you. So, would he have
13 been terminated on May 23rd, 2013 had he not accumulated
14 24 disciplinary points?

15 A Unlikely.

16 Q You say unlikely, do you have any reason to think
17 that he would have?

18 A No, if would have been at 20 points that day it
19 would have been business as usual.

20 Q Aside from those 24 points that he accumulated,
21 was Dura-Fibre intending to terminate him in any case?

22 A Not that I'm aware of.

23 Q So, based of the information you know, but for
24 those 24 points, you know assuming he wanted to continue
25 to still work there, he would have continued to work

1 there?

2 A Yes.

3 Q Who determined that he would be terminated?

4 A Jamie Gonnering kept, keeps the point files, the
5 spreadsheets of all the employees. So, it was determined
6 after the four point, the last four point write up that he
7 had, or was going to be given, that that would put him at
8 24.

9 Q Did you know how many points he had at that last
10 write up meeting?

11 A No, not before I, no. At the time the last write
12 up came in is when I knew, is when I had heard that that
13 was going to put him at 24. I didn't know where he was at
14 prior to that.

15 Q So, you mean after the last four points?

16 A After, yes, after the safety committee, after the
17 safety team decided that he was going to be given four
18 points, it was at that point after that, that I had
19 learned that that was going to put him at 24.

20 Q So, was it Jamie Gonnering who determined that
21 Mr. Jacobs would be terminated?

22 A Between her and Luke I believe, yes. Jamie first
23 came to the realization that this was going to put him at
24 24, and then there's a conversation I'm guessing with
25 Luke, and at some point I was brought into that, that yes,

1 this is going to put him at 24.

2 Q At what point were you brought into that?

3 A I don't recall specifically. It was sometime
4 after, it was sometime, I thought it was sometime after
5 the safety team met that afternoon, and he got his four
6 points.

7 Q And what did you discuss?

8 A Just that this write up puts him at 24 and that
9 he was probably going to be terminated. I don't know the
10 specifics of that conversation.

11 Q Okay, and between May 21st and May, so he was
12 terminated after he was recently issued 12 disciplinary
13 points, is that right?

14 A The, from what I understand, from what I remember
15 the four points that he got out of that safety incident
16 form, I believe those were the points that put him over
17 the edge.

18 Q Right.

19 A There may have been, there was some discipline I
20 believe before that, but I don't know at what point. At
21 some point it all added up to 20 and then that last four
22 is what , is what put him over.

23 Q And he received eight points for failing to
24 report an alleged on-duty accident or injury that occurred
25 on May 21st, 2013, is that correct?

1 A Yes, that would have been, yes. That was the
2 incident prior to the tripping incident.

3 Q So, he accumulated 12 out of 24 points based off
4 of those last two incidents, is that correct?

5 A Correct.

6 Q And that's half of the 24 points?

7 A Yes.

8 Q And all of those were accumulated sometime
9 between May 21st and 22nd, is that right?

10 A Sounds right.

11 Q You say it sounds right, do ---

12 A Yeah that, those days, this all happened within
13 about a three day period. It was a Monday, Tuesday,
14 Wednesday, Thursday from beginning to end.

15 Q Did, so are you aware that, did you do an
16 investigation of the incident the led to Steve Wilz's
17 alleged injury?

18 A That, no, I was not involved in that
19 investigation.

20 Q Why not?

21 A Because I was not at the plant that day. So, the
22 incident, that incident got reported to Jamie, and then I
23 believe Jamie took care of the investigation that
24 afternoon.

25 Q Did she work with anyone else to do that

1 investigation?

2 A I think Scott Gehl was part of that.

3 Q Who is Scott Gehl?

4 A Quality, design and quality manager.

5 Q What did they determine?

6 A Just that, from what I recall is the, the
7 accident that Steve Wilz had, he tweaked his shoulder
8 while stringing up something on the machine, and they, he
9 realized he tweaked his shoulder, talked to Tim about it,
10 and neither one of them reported it.

11 Q Do you know what Steve Wilz told Tim Jacobs?

12 A Not off-hand, no.

13 Q Did you ever?

14 A I may have one time heard this, based just off of
15 conversations with Jamie when I got the scoop on what went
16 on --

17 Q Okay.

18 A -- but I don't remember specifics of what was
19 told to whom.

20 Q Was Steve Wilz issued any points?

21 A I believe he was disciplined for, yes, he was
22 disciplined for failing to report an accident. I believe
23 I gave him those points.

24 Q Was he disciplined for anything else?

25 A I don't believe so.

1 Q So, was he disciplined for an unsafe act?

2 A I don't know, I don't believe so.

3 Q Did Dura-Fibre conclude that Steve Wilz was
4 injured?

5 A I don't recall what the specifics of the shoulder
6 injury turned out to be.

7 Q Okay, so you don't know whether he received any
8 types of medical treatment?

9 A I don't remember.

10 Q How did, do you know how Dura-Fibre determined he
11 was injured?

12 A Just based off his statements, I believe. Again,
13 there may have been some medical treatment after that to
14 determine the more significant, an actual diagnosis, but
15 that I'm not aware of.

16 Q I understand, you didn't do the investigation.

17 A Right.

18 Q And that was Jamie Gonnering and Scott Gehl?

19 A Correct.

20 Q Mr. Jacobs was Mr. Wilz's lead operator, is that
21 right?

22 A Correct.

23 Q That day?

24 A Yeah.

25 Q What is Mr. Wilz's job?

1 A He's a roll grab driver.

2 Q What does that mean?

3 A He brings the big paper rolls in with the roll
4 grab machine and stages them at the roll stands were
5 another operator puts the rolls into the machine.

6 Q Does that require lifting?

7 A Minimal, I mean the specific part of his job, he
8 was helping string up the machine. So that's, it's
9 generally, when they're not performing their main
10 functions, which is moving the raw materials in and out,
11 they'll help with stringing up the machine, or if the
12 machine is down they help out where, where it needs to be.
13 So, yeah, there is some expectations that there is some
14 lifting, pulling, pushing, in the course of your day.

15 Q Do you know if Mr. Wilz continued to work for the
16 remainder of the day?

17 A I believe he did.

18 Q Do you know if Mr. Wilz was in pain for the
19 remainder of the day?

20 A I don't recall.

21 Q If Mr. Wilz indicated, do you know if Mr. Wilz
22 indicated to Tim Jacobs that he felt okay that day?

23 A I think the statement he made was that he tweaked
24 his shoulder, but that he was okay.

25 Q Okay.

1 A I believe that was the statement that was made.

2 Q Do you think that statement is a basis for, for
3 Mr. Jacobs to know that Mr. Wilz may have been injured?

4 A Yes, because I think when a, when an employee
5 describes a tweak that they clearly felt something in
6 their extremity. Whether it was for five seconds of five
7 minutes, they clearly felt something, and that to me would
8 constitute a reportable incident.

9 Q Even if he said he was okay?

10 A Yes, because he still felt something at the time.

11 Q Has the company given training on orthopedic
12 injuries?

13 A Not aware of that.

14 Q So, when did Mr. Jacobs report Mr. Wilz's alleged
15 shoulder tweak, we'll call it?

16 MR. ZAWADSKY: I'm going to make a point, to the
17 extent the witness has first hand knowledge or hearsay
18 knowledge.

19 BY MR. RUTENBERG:

20 Q And if you don't know that's fine.

21 A Yeah, I don't know.

22 Q So, he did not report it to you?

23 A No, did not come to me. It came to light at, I
24 don't know when it came to light and to whom.

25 Q Okay, did you issues a discipline slip to Steve

1 Wilz for late reporting?

2 A Yes.

3 Q And did you issue a discipline slip to Mr. Jacobs
4 for late reporting?

5 A I believe so.

6 Q And when it's a late reporting, just so I'm
7 clear, when an employee late reports an injury or a near,
8 an accident or a near miss does the safety committee
9 determine how many points are assigned, or is it solely
10 within the purview of the supervisor?

11 A Failure to report is a specific incident itself,
12 outlined in the union contract, which is what we go off
13 of. Safety team is not involved in the actual failing to
14 report. Just the unsafe acts potentially that was.

15 Q What I'm handing you is pre-labeled as GX-13. Do
16 you recognize GX-13?

17 (Government's Exhibit No. GX-13 was marked
18 for identification.)

19 A Yes.

20 Q Is that your handwriting?

21 A It is.

22 Q Does it appear to be, what is GX-13, can you
23 identify it?

24 A It's a discipline slip that was issued to Tim
25 Jacobs for the failing to report on-duty accident.

1 Q Did you consult with anyone before issuing this?

2 A Yes, both Jamie and Luke.

3 Q What did they say?

4 A Basically we talked about the, that because he
5 did not report the, he did not report the accident the day
6 it happened that he was going to get a points. We
7 outlined the section of the contract that applied, and I
8 believe I also listed here a couple of sections in the
9 employee handbook.

10 Q So, did you determine then that Tim Jacobs was
11 aware Steve Wilz had injured his shoulder?

12 A Yeah, it was made to me, it was made aware to me,
13 you know, that afternoon or the next day, whenever I got
14 back into the office after the investigation had taken
15 place.

16 Q And what was the injury?

17 A I don't remember what the, the long term I don't
18 remember. It was a tweak of the shoulder is what the
19 injury was.

20 Q Okay, and so a tweak is an injury?

21 A To me a tweak, you physically feel something
22 that's not right.

23 Q Okay.

24 A So again, whether it lasts five seconds or five
25 hours, at least initially it was determined to be an

1 injury.

2 Q How long did this last, how long did this tweak
3 last?

4 A I don't know.

5 Q You say at least initially, was there a later
6 determination as to whether there was, it was an injury?

7 A I'm sure Jamie followed up with him the next day
8 or later that afternoon, or as far as, hey, how are you
9 feeling. Again, I don't know if he went in for any
10 medical treatment or what the diagnosis was, if one was
11 made.

12 Q So, essentially here is the injury is that
13 somebody felt a tweak?

14 A Yes.

15 Q And do you know how long the tweak lasted for?

16 A I do not.

17 Q Did you know?

18 A I don't, I may have known at one time, I may have
19 talked to him the next day, or he may have told me he was
20 fine or it still hurt, I don't recall.

21 Q And Mr. Wilz, did he continue to work for the
22 remainder of that shift?

23 A That day I believe so. But again, I wasn't in
24 the, I don't think I got back to the office until after he
25 left for the day.

1 Q It says, can you read on GX-13 on the second
2 sentence under incident where it says Tim was?

3 A Tim was notified by Steve on 5/20, and had the
4 chance to report incident to supervisor that day, but did
5 not report until 5/21.

6 Q What is an incident?

7 A The accident that happened. I just referred to
8 it as an incident. The incident that caused him to tweak
9 his shoulder.

10 Q Okay, and what was the incident that caused him
11 to tweak his shoulder?

12 A I believe he was stringing up the machine and he
13 was pulling out a line, believe he was pulling out a line
14 of paper and that's when he felt the tweak.

15 Q It says at the bottom, there's no employee
16 signature here, correct?

17 A Yes.

18 Q Are employees supposed to sign these?

19 A They're supposed to sign them, acknowledging
20 receipt of notice. It doesn't mean they agree with it,
21 they're signing that they got a receipt of it.

22 Q Okay, and in this case it appears Tim Jacobs
23 would not sign?

24 A Correct.

25 Q Do you know why?

1 A Yeah, he just stated that, just what I stated on
2 there. Stated he would not sign until the issue is
3 settled.

4 Q And it says requested a meeting to discuss the
5 matter, do you see this?

6 A Yep.

7 Q When was that meeting held?

8 A That I don't, that I don't know.

9 Q Were you at the meeting?

10 A Probably, but I don't recall the specifics of a
11 meeting in regards to this incident.

12 Q What happens at those meetings, at that meeting?

13 A Generally the employee has their say as to why
14 they think the discipline is unfair, or whatever, and then
15 a determination. I guess a determination isn't always
16 made, but there's a conversation between the employee and
17 Luke, the director of operations, Luke at that time, and
18 then sometimes a determination is made, sometimes the
19 discipline is upheld, sometimes they'll say I need some
20 time to think about it, we'll get back together, sometimes
21 they will throw it out. It's, those are I guess the three
22 outcomes of that meeting. But eventually the discipline
23 is determined one way or another.

24 Q Do you know what day you gave this to him, do you
25 know what time, excuse me, do you know what date GX-13 was

1 provided to Mr. Jacobs?

2 A It was dated 5/22.

3 Q Do you know whether you gave it to him in the
4 morning or in the evening?

5 A Probably the morning, because he was a day shift
6 employee, so it would have been sometime between 6 a.m.
7 and 2 p.m.

8 Q What I'm handing you has been labeled as GX-21,
9 or Exhibit 21. Please take a look and let me know when
10 you're ready.

11 (Government's Exhibit No. GX-21 was marked
12 for identification.)

13 A Yeah, I'm ready.

14 Q Do you recognize GX-21?

15 A Yes.

16 Q What is it?

17 A It's the documentation of the entire incidents
18 that whole week that I was asked to put together on July
19 26th.

20 Q So, did you write this?

21 A Yes.

22 Q Who asked you to write it?

23 A I believe probably Jamie or Luke.

24 Q Do you know why?

25 A To document the, they wanted the entire thing

1 documented from my point of view, from what I recall at
2 the time.

3 Q Right, but do you know why they wanted it
4 documented?

5 A I don't remember why specifically.

6 Q They didn't tell you?

7 A I don't, they may have, I don't remember.

8 Q Okay, July 26th, 2013, that's after Mr. Jacobs
9 was terminated, is that correct?

10 A Yes.

11 Q Did you question as to why they needed this
12 months after he was terminated?

13 A Again, they probably told me at the time why they
14 wanted it, so I didn't need to question it.

15 Q Did anyone edit this?

16 A No.

17 Q Were there multiple versions?

18 A No.

19 Q And, in fact, on the third paragraph, do you see
20 that, it says on Wednesday May 22nd, 2013?

21 A Yes.

22 Q It appears you stated that, well feel free to
23 read the paragraph to yourself.

24 A Okay.

25 Q I'm just going to ask you if this clarifies what

1 time you may have ---

2 A It does.

3 Q Okay, I'm going to ask what time, this may
4 clarify what time you gave him the original slip? Does it
5 clarify?

6 A Yeah, it appears that this, at that point at
7 11:25 we had the conversation and the slip was going to be
8 issued at that point, which is when he refused to sign it.

9 Q And when you say the slip you're talking about
10 GX-13?

11 A Correct.

12 Q Do you know who Tom Jacobs is?

13 A Yes.

14 Q Who is Tom Jacobs?

15 A Tim's brother.

16 Q Is he also an employee?

17 A Yes.

18 Q Of Dura-Fibre?

19 A Yes.

20 Q Is he still?

21 A He is.

22 Q Have you ever had to provide discipline to Tom
23 Jacobs?

24 A I'm sure I have. I know I've disciplined him for
25 attendance. Off the top of my head that's all I can

1 remember.

2 Q What I'm handing you is, I've pre-labeled as GX-
3 44. Please take a moment.

4 (Government's Exhibit No. GX-44 was marked
5 for identification.)

6 A Okay.

7 Q Let me just ask you a general question. Why do
8 you want, what is the purpose of Dura-Fibre's policy to
9 have employees report injuries to members of management?

10 A Well again, like I said before, they're, we're
11 obligated to do so for reporting purposes, and again for,
12 we want to keep employees safe, and again we want to know
13 if any policies or procedures need to be changed as a
14 result of something that an employee did.

15 Q After having read, first of all, what is GX-44?

16 A It appears to be, more or less a documentation on
17 a coaching that I did with Tom Jacobs about an accident
18 that occurred with another employee.

19 Q Was that your signature at the bottom?

20 A Yes.

21 Q Do you remember signing this document?

22 A Do I remember specifically the date, you know, of
23 the details surrounding this date, no, but that is my
24 signature, so yes, I, getting re-aware of this situation.

25 Q Did you coach, do you remember coaching Tom

1 Jacobs?

2 A If it said I did, I did.

3 Q Do you have any reason to believe that this
4 account is inaccurate?

5 A No.

6 Q So, what happened in this case? What happened,
7 what did Tom Jacobs do or not do?

8 A So, an employee had a, an employee got an
9 accident. I was out of the office that day, there was
10 another individual who was filling in for me as
11 supervisor. He filled out the injury report, the injury
12 was reported to him, no problems.

13 Q Who filled out the ---

14 A Lisa Van Kooy wan injured, reported it to him,
15 there's no problems there. Accident report was filled out
16 by the end of the day. My initial issues was that I
17 hadn't been made aware of it after talking to Steve. He
18 told me that the report had been filled out and it was, it
19 was on my desk before they left for that day, so no
20 problems there.

21 Q I'm sorry, wait, so is it Dura-Fibre's policy
22 that a report may be filled out and just put onto a desk?

23 A A report is supposed to be turned in before the,
24 an accident report is supposed to be filled out and turned
25 in before the end of your shift.

1 Q Okay.

2 A And at that point Steve was filling in for me as
3 a supervisor, so he was considered the supervisor on duty
4 at that point. So he confirmed for me that next morning,
5 that yes, he was aware of the accident and that it was,
6 the report was on my desk.

7 Q But he didn't call anyone, did he?

8 A Who?

9 Q Steve didn't call, I'm sorry, Tom Jacobs, I'm
10 sorry you said Steve was filling in for you?

11 A Steve was filling in for me that day.

12 Q Okay, did Tom Jacobs report it to Steve?

13 A I, I don't know.

14 Q Okay.

15 A I don't know if he actually reported it or if he
16 just threw the, because he threw the report on the desk if
17 that was, if that was his way or reporting it because I
18 wasn't around.

19 Q Is placing a report on a desk the same as
20 notifying the appropriate supervisor?

21 A I would have, like I kind of coached him I would
22 have gone about it a different way. He did, you know,
23 almost everything right here.

24 Q But he didn't actually report it on the day --

25 A Well again, if he ---

1 Q Let me ask the question, please, I don't mean to
2 interrupt. But does Dura-Fibre's policy require an
3 employee to contact the appropriate supervisor on the day
4 of the accident?

5 A Yes, whether he contacted Steve or not, that I'm
6 not certain of.

7 Q Did you assign Mr. Jacobs any disciplinary points
8 for this?

9 A I did not.

10 Q Why not?

11 A I'm just reading, reading this over again. Just
12 to me this was a grey area where he, he satisfied the
13 requirements of filling out the report. Again, I don't
14 know if at the point, I don't know if at the time I was
15 told that he had reported to Steve, so even though Steve
16 is not technically the plant supervisor he was my fill-in
17 that day. And I, again, grey area, that's why I left it
18 to a coaching session that, you know, in the future just
19 contact me just so he's covered.

20 Q Can you read the first sentence of the last
21 paragraph?

22 A I further explained that, based on the fact that
23 he did fill out the accident report prior to leaving, and
24 the injury was not serious enough for medical treatment or
25 getting a drug and alcohol test, that he would not be

1 facing any discipline for failing to report in this case.

2 Q So, part of the reason, so it seems like you do
3 have discretion not to award, not to, excuse me, issue
4 disciplinary points in cases where an employee does not
5 report verbally that an accident occurred to a supervisor,
6 is that correct?

7 MR. ZAWADSKY: I'm going to object to form.

8 THE WITNESS: I think in this case there was
9 still, there was, like I said I think it was a grey area
10 whether he report, you know whether he, the fact that he
11 didn't report it specifically to me, like I said I don't
12 recall what conversation he had with Steve Griffin. That
13 may have been, he didn't report it specifically to me, but
14 if had reported to Steve I may have looked back and said,
15 okay, you're, you didn't report it specifically to me but
16 you did talk to somebody who was covering for me.

17 BY MR. RUTENBERG:

18 Q Okay, but no where in this contemporaneous
19 documentation do you even mention Steve Wilz, correct?

20 A No, correct.

21 Q So, maybe that happened with Steve Wilz, maybe it
22 didn't, but ---

23 MR. ZAWADSKY: You said Steve Wilz?

24 MR. RUTENBERG: Steve who?

25 MR. ZAWADSKY: Steve Griffin.

1 BY MR. RUTENBERG:

2 Q Steve Griffin, excuse me, thank you very much.
3 But nowhere in this report does it mention Steve Griffin,
4 does it?

5 A No, other than that he, other than what's in
6 paragraph three, that I confirmed with him that the
7 accident report was on my desk.

8 Q Okay, so I want to go back to that sentence I had
9 you read. So, it does appear, does it appear, excuse me,
10 do you have discretion not to award, not to issue
11 disciplinary points in cases where an injury is not
12 reported before the end of the shift?

13 A Restate that, or re-ask that, please?

14 Q Do you have discretion to not award disciplinary
15 points in cases where an employee does not, does not make
16 a report of injury before the end of shift?

17 A In this specific case, there must have been some
18 grey area enough where I used some discretion, yes.

19 Q So you do have discretion?

20 A Yes.

21 Q And in that sentence you just read, if you
22 recall, the first sentence of the last paragraph where it
23 says, let me ask you, did you decide not to award points
24 in part because the injury was not serious enough for
25 medical treatment or getting a drug and alcohol test?

1 A It was a combination of the seriousness of the
2 injury, and the fact that the accident report was filled
3 out, as it was supposed to be.

4 Q Okay.

5 A So again, he did, I felt Tom did, did Tom do 100
6 percent of the things correct, no, but I thought he did 80
7 to 90 percent of the things correct. That's where I, I
8 used some discretion there. It wasn't clearly, it wasn't
9 a black and white situation I didn't feel at the time.

10 Q And that's in part because the serious was not,
11 the injury was not serious enough for medical treatment?

12 A It had more to do with the, the accident report,
13 the accident report, whether it was, whether I was, it was
14 combination of the accident report, you know, being left
15 on the desk, versus me not being physically called at that
16 point because I was out of the office. And a combination
17 of Steve also being in my place, and the fact when he,
18 when Steve Griffin confirmed for me that, yes, the
19 accident report was on my desk. I looked at it, I was
20 like, okay could he have done it a little bit differently,
21 sure. But I, again, I utilized my discretion and that's
22 what I, I guess coached him on.

23 Q Okay.

24 A In the future if this happens, just call or text
25 me just so you're covered and we don't have this grey area

1 again.

2 Q Did Steve Wilz receive medical attention the day
3 he tweaked his shoulder?

4 A I don't ---

5 MR. ZAWADSKY: I'm going to object. Asked and
6 answered.

7 THE WITNESS: I don't remember.

8 BY MR. RUTENBERG:

9 Q When did you find out, when did you actually
10 receive the accident reporting form?

11 A For?

12 Q Excuse me, for the Tom Jacobs, for the injury of
13 Ms. Lisa Van Kooy?

14 A My, when did I actually receive the accident
15 report?

16 Q Yes.

17 A It looks like Thursday when I came in it was on
18 my desk.

19 Q And when did you first find out about the
20 accident?

21 A I'm sorry, I found out about the accident on
22 Wednesday the 26th.

23 Q And where does it say that?

24 A Third paragraph, the accident occurred on
25 Tuesday, I was made aware Wednesday morning.

1 Q The next day?

2 A Yes.

3 Q And you agree, based off of the policy we went
4 over at GX-9, that an employee is to call a supervisor,
5 correct, if they're not available, or call someone, or
6 talk to another supervisor?

7 A Yes.

8 Q And you don't know whether that actually occurred
9 here?

10 A No, Steve Griffin was my, Steve Griffin was the
11 fill-in supervisor on Tuesday when this happened. I don't
12 know what type of conversation was had between Tom and
13 Steve at that day. If there was a conversation, if there
14 was any, if there was a conversation, Steve did confirm me
15 that there was the accident report. I don't recall what
16 other conversation him and I had versus, you know
17 regarding, well when did he actually, did he actually
18 physically talk to you or contact you.

19 Q And the point of this, as you said, the point of
20 this accident reporting plan is because you're required to
21 report reportables, is that right?

22 A Correct.

23 Q For safety reasons?

24 A Correct.

25 Q And for future changes that might need to be made

1 for safety purposes, correct?

2 A Yes.

3 Q Why is it then important that these injuries are
4 reported before the end of the shift?

5 A Because if people are allowed to go home who
6 knows what can, what they can do to aggravate the injury
7 or do something else, and it prevents people from, you
8 know, falsifying claims.

9 Q And isn't that specifically what happened in this
10 case, however, with Tom Jacobs? I mean, he wrote a
11 report, but he didn't notify you, did he?

12 A He did not notify me specifically at that time,
13 no.

14 Q Right, and you don't know whether he notified
15 anyone else?

16 A Correct.

17 Q And you did take into account the seriousness of
18 an injury as to whether points would be issued, is that
19 correct?

20 A Based off of what I wrote in here, yes.

21 Q But Steve, but when Steve Wilz injured his
22 shoulder, and allegedly injured his shoulder, we're not
23 even sure what happened at least today, you did not ---

24 MR. ZAWADSKY: That's not part of the question,
25 right, what you just said is not part of the question,

1 right?

2 MR. RUTENBERG: Well, I want to clarify that we,
3 that there was no, because he didn't, that Mr. Blair did
4 not actually do the investigation, is not, he testified he
5 wasn't sure of what the injury was. So, I was clarifying
6 that. Is there an objection?

7 MR. ZAWADSKY: Yes, I don't know, just answer the
8 question. I don't know why you have to do all that.

9 BY MR. RUTENBERG:

10 Q Okay, why did you consider Steve, why did you
11 consider Mr. Tim Jacobs alleged failure to report an
12 injury to not be within a grey area?

13 A Because there was no, there wasn't even an
14 accident report filled out. There was no conversation
15 with either of them to me or anybody that I know of while
16 I was gone that day. We did not find out anything until
17 the next day. In Tom's situation and Lisa's, there was at
18 least an accident report that was filled out, and Steve
19 Griffin being the supervisor confirmed that, yes, the
20 accident report was on my desk the day before, before they
21 left. So there's, there was my grey area that ---

22 Q And is that part of the policy, putting an
23 accident report on the desk?

24 A Prior to, an accident report must be turned in
25 prior to the end of the shift. Now, that's the turned in

1 that is not, not worded more specifically as must
2 physically give it to a supervisor. If I'm in a meeting
3 at 2:00 o'clock and somebody is leaving for the day and
4 they leave it on the desk, you know, you can argue about
5 whether that's, you physically notified somebody or just
6 putting it on the desk is sufficient, and that's where
7 that, I guess coaching session came in, because there was
8 a little bit of a, like I said, a grey area.

9 Q But you did testify previously today that your
10 understanding of the Dura-Fibre policy is that, in
11 addition to that, a verbal communication must be made
12 either to the supervisor, a fill-in supervisor, or if they
13 can't be reached another member of management, or a call
14 from home, correct?

15 A Yes.

16 Q And, in fact, at the time that Mr. Tom Jacobs, at
17 the time of this incident with Mr. Tom Jacobs and Lisa Van
18 Kooy, were there cell phone and home phone numbers
19 available for them to use to report?

20 MR. ZAWADSKY: Object to form.

21 BY MR. RUTENBERG:

22 Q Did Dura-Fibre make available your contact
23 information ---

24 A Yes.

25 Q -- to call you?

1 A Yes.

2 Q Where was the contact information left?

3 A They probably had my cell phone in their, on
4 their , they probably had my number on their cell phones.

5 Q Beyond that did Dura-Fibre leave your number
6 somewhere ---

7 A Yes, my number is posted, office numbers are
8 posted in the plant.

9 Q I want to talk now about Tim Jacobs' ankle
10 twisting. Do you know what I mean when I say ankle
11 twisting?

12 A Yes.

13 Q What I am talking about when I talk about, what
14 do you believe I am talking about when I talk about Tim
15 Jacobs?

16 MR. ZAWADSKY: I object to the form of that
17 question. How do you, how does he know, why does it
18 matter what he thinks you're talking about?

19 MR. RUTENBERG: I want to clarify that we're on
20 the same page.

21 MR. ZAWADSKY: Why don't you tell him what page
22 you're on and then he can answer the question?

23 BY MR. RUTENBERG:

24 Q You can answer the question.

25 A What we are talking about is when Tim came to me

1 the afternoon of the, I think it was Tuesday afternoon,
2 Wednesday afternoon, I believe it was Wednesday afternoon.
3 Told me that he had tripped, or he had stumbled coming
4 down this flight of stairs coming off of our wet end,
5 which is like two or three steps, and that he, when he
6 stumbled he landed on his ankle wrong and twisted it and
7 he was out, and he wanted to report that to me. And then
8 he had talked to me as well about how his shoulders were
9 sore from all of the splices that he was doing on the roll
10 stands. So, an accident report was initiated. I did my,
11 he filled out the accident report, we signed everything, I
12 did the investigation right away.

13 Q Did you investigate as to why his shoulders hurt?

14 A I mean I knew specifically what he, there wasn't
15 a specific incident that he could refer to. He said I
16 believe it was just he was, just from all the repetitive
17 motion of, you know, putting his arms above his head to
18 set splices and pull paper has left his shoulders sore.
19 It was more of a he was just telling me to tell me, it was
20 more of a cumulative effect of the years of working in the
21 plant.

22 Q So, that's not an injury? Is that an injury?

23 A It could be determined. It could be considered
24 an injury if, that's, again that's more of a grey area.
25 We've had other instances like that where people have had

1 just injuries from over the years, not an injury I should
2 say just the nature of the, just the nature of the job has
3 caused their extremities to deteriorate. Whether that
4 was, I don't believe we, we didn't consider that, we
5 didn't take that into consideration as any type of an
6 injury in this specific incident. I think if, if Tim had
7 continued to be employed it probably would have been
8 looked into a little bit further. Just, okay, what can we
9 do here, or is it a, again is it a cumulative effect of
10 just, you know, many years of doing this work.

11 Q Where did this conversation occur, where did he
12 report it to you?

13 A I was in, I believe I was in my office at the
14 time.

15 Q Not on the floor?

16 A I don't think so.

17 Q So, did this discussion where he reported his
18 ankle twisting and shoulder pain, did this occur on the
19 same day that you previously provided him the, or issued
20 him the eight disciplinary points?

21 A I think it was after, it was after that in the
22 afternoon. I'd have to refer back to my, my statement
23 that I, my three page statement that I wrote on that. But
24 I believe it was the same day.

25 Q Did he tell you why he was reporting the ankle

1 and shoulder injury, or excuse me, the ankle and shoulder?

2 A Because he had just gotten, because he knew he
3 had just gotten written up for failing to report and he
4 wanted to make sure he was doing the right thing.

5 Q Do you know when he twisted his ankle?

6 A It wasn't long before he actually came in and
7 reported it. I don't, I'd have to look at any
8 documentation if you're looking for the exact specific
9 time, but he reported it basically very shortly after it
10 happened.

11 Q Do you know if it occurred prior to when you met
12 with him, do you know whether it happened before or after
13 you met with him previously to assign him the eight
14 points?

15 A I think it happened after, I'm not 100 percent
16 sure but I don't remember the exact hour by hour timeline
17 of that day.

18 Q I understand. So, you opened up an
19 investigation, is that right?

20 A Yes.

21 Q Who did you talk to?

22 A I basically, Tim had just given me the
23 information so I walked out at that point then I, at some
24 point then I walked out and actually, again he, I had him
25 walk me through exactly what he was doing. I may not

1 have, his ankle, he may have still been favoring his ankle
2 at the time, so I don't believe I made him actually walk
3 up and down the stairs and re-enact it. But I, you know,
4 show me the exact set of stairs where it happened, and he
5 did that, and I don't believe there was any, I would have
6 talked to any witnesses if he had listed any. I don't
7 remember if there was any witnesses listed.

8 Q Were there any cameras?

9 A No.

10 Q Was he, is there a, did you ask him whether he
11 was holding on to the railing? Is there a railing?

12 A There is a railing. I don't recall if I asked
13 him if he was holding on to it or not.

14 Q And did he tell you one way or another whether he
15 was holding on to the railing?

16 A I don't recall what his specific verbiage to me
17 was. He said he was coming down the flight of stairs and
18 landed wrong on his ankle.

19 Q Okay.

20 A Or tripped, or tripped coming off the stairs and
21 landing on the wrong, I don't remember.

22 Q Did he trip on the final stair?

23 A I think it was the final stair, and then he
24 landed awkwardly on his ankle.

25 Q Did he miss the step?

1 A I don't recall if he missed it or tripped.

2 Q Do you know if he tripped over his own foot?

3 A I don't recall.

4 Q Did you note any of that information?

5 A Whatever I would have noted would have been
6 probably on the accident report, or in the investigation
7 part of it.

8 Q Did you have any help with the investigation?

9 A No, I don't believe so.

10 Q How long did the investigation last?

11 A I probably wrapped everything up in, being out on
12 the floor probably was only 10 minutes or so, and then
13 just writing the, you know, just documenting it on the
14 form.

15 Q And what's the form called?

16 A It's part of the accident report, it's just the
17 investigation portion of it, it's on either page two or
18 three of the report.

19 Q And what was your ultimate conclusion?

20 A Well, at the time I checked there was two boxes,
21 there was accident and there was near miss accident.

22 Q I'm going to interrupt you, I'll get to that in a
23 moment, I don't mean to be rude. What did you conclude,
24 did you conclude that he did something wrong?

25 A Yes.

1 Q And what did you conclude?

2 A Just that his general, I guess overall, again
3 inattentiveness to his surroundings and his, would be un-
4 coordination for lack of a better word, led to the
5 accident.

6 Q And how did you determine that he was being
7 inattentive?

8 A Because he wasn't properly putting his own two
9 feet in front of the other while he was walking down the
10 flight of stairs. A flight of stairs that he's navigated
11 successfully without tripping probably hundreds of times
12 in his time at the company.

13 Q Did you try to find witnesses to what happened?

14 A I don't recall.

15 Q And just so I'm clear, by default if somebody
16 trips on a stair, or that in your mind is being
17 inattentive to the surroundings, is that right?

18 A I think so.

19 Q So, you filled out the accident investigation
20 form, is that right?

21 A Yep.

22 Q Was there a safety committee meeting?

23 A The following, or no actually it was later that
24 afternoon.

25 Q And it just so happened it was that afternoon?

1 A It just happened to be the same day, I think,
2 that we were meeting anyways.

3 Q The accident investigation form, was that filled
4 out before or after the safety committee meeting?

5 A Before.

6 Q How could Mr. Jacobs have done better in going
7 down the stairs?

8 A Took his time a little more carefully, just
9 actually been watching, watching his feet touch the
10 stairs. It sounds very simplistic to explain, but
11 basically holding on to the railing, watching his feet be
12 placed on the steps until he was clearly safe of the
13 steps.

14 Q But you don't know whether or not he was holding
15 the rail, right?

16 A No, I am not, I don't recall.

17 Q Was he running down the stairs?

18 A I don't recall if he was running to try to do
19 something, or if he was just casually walking down.

20 Q Do you know if he was skipping stairs down?

21 A I don't believe so.

22 Q Was he horse playing?

23 A I don't think so.

24 Q Do you know that he wasn't watching the stairs?

25 A No, I don't.

1 Q Was there anything else Mr. Jacobs could have
2 done better?

3 A What I just explained, I think just watching
4 where you're, being a little more careful and watching
5 your feet hit the stairs.

6 Q But you don't know, again, you don't know whether
7 he was watching his feet hit the stairs?

8 A Yeah, no, I guess not.

9 Q Did Mr. Jacobs violate any safety rules in
10 twisting his ankle?

11 A Well, what was determined was that, by the, it
12 was determined to be an unsafe act based off of what I was
13 just explaining, and that at that point the safety team
14 determined that it was, it was a, an offense based on the
15 criteria of the safety incident form, that it was an
16 offense worthy of being disciplined for, failure to, or
17 committing an unsafe act.

18 Q So, you determined it was, did you determine it
19 was an unsafe act prior to the meeting?

20 A Yes, that's what, yes, yes.

21 Q And that sounds consistent with the way you
22 typically do things, right? Where you determine whether
23 a ---

24 A Would determine that at the point of, of filling
25 out the accident report.

1 Q Do you typically note what the potential
2 violation is on the accident report?

3 A No, I don't believe so, I just, it's a box that
4 is checked.

5 Q So, aside from your determination, did you
6 determine that Mr. Jacobs violated any other safety rules
7 aside from the fact that he committed an unsafe act?

8 A I don't believe so.

9 Q Are there rules or procedures about going up and
10 down stairs?

11 A Nothing specifically drawn out, no, other than
12 just that employees have the expectation to work carefully
13 around themselves, or work, you know, I guess just what I
14 said, work carefully. Be aware of your surroundings.

15 Q What I'm going to hand you is GX-14. Let's just
16 go off the record for one second.

17 (Government's Exhibit No. GX-14 was marked
18 for identification.)

19 (Off the record.)

20 BY MR. RUTENBERG:

21 Q Okay, back on. Do you recognize GX-14?

22 A Yes.

23 Q What is it?

24 A It's an accident investigation form that I did at
25 the time.

1 MR. RUTENBERG: Let's just go off the record.

2 (Off the record.)

3 MR. RUTENBERG: Okay, back on the record. We're
4 back from lunch, continuing the deposition of, the
5 individual deposition of Scott Blair, and the corporate
6 designee for, 30(b)(6) designee for topics four and 16.

7 MR. ZAWADSKY: Six and 14.

8 MR. RUTENBERG: Excuse me, yes, six and 14, thank
9 you, counsel.

10 BY MR. RUTENBERG:

11 Q Mr. Blair, if you recall, when we broke for lunch
12 we were talking about the accident investigation you
13 conducted with regard, after Mr. Tim Jacobs reported to
14 you that he had twisted his ankle. Do you recall?

15 A Yes.

16 Q Okay, and I had just handed you what I have
17 labeled as Exhibit 14. Do you recognize Exhibit 14?

18 A Yes.

19 Q What is it?

20 A That is the accident investigation for that was
21 attached to the actual accident investigation.

22 Q Does this appear to be a full, accurate and
23 complete copy of the accident investigation form?

24 A Yes.

25 Q There's no second page?

1 A No.

2 Q Is that your handwriting?

3 A Yes.

4 Q When did you complete this form?

5 A This would have been not long after Tim came into
6 the office and reported the incident to me. He would have
7 filled out the accident report at that time, or had it
8 already filled out at that point, and then in this case it
9 wasn't long after him reporting to me that I actually did
10 the accident investigation.

11 Q Okay.

12 A Sometimes they don't always happen immediately
13 following. But in this case I believe it did.

14 Q What does the accident report form look like?

15 A It just has all the employee's information, name,
16 address, date of birth, that type of personal information,
17 then it describes what, it has a section that they fill
18 out as to what they did, what the incident was, or what
19 the accident was, if there was an injury, the extent of
20 the injury, medical treatment, drug tests given.

21 Q And they fill that out?

22 A They fill that out, the lead would sign it, and
23 then it would get turned in to me, and then I would sign
24 it, do the investigation and human resources would
25 eventually get it, sign it and ---

1 Q Who signs it when the lead does the report?

2 A When the lead does the report it would ---

3 Q Oh, I see, okay. And then you do the accident
4 investigation form?

5 A Correct.

6 Q So, how did you describe the incident to this, in
7 this case?

8 A Well, he said he was walking down on a short
9 flight of steps, stepped awkwardly on his foot, twisting
10 his right ankle. And I determined that, you know, he
11 basically did not step off the bottom stair squarely onto
12 his foot.

13 Q What does it mean to step awkwardly?

14 A Not, basically step on the side of your foot as
15 opposed to the, you know, the meat of it, I guess.

16 Q So, you concluded that he stepped on the side of
17 his foot when he hit the ground?

18 A It must have been, yeah.

19 Q Did he tell you that?

20 A I think he said he landed awkwardly.

21 Q And do you know which side of the foot he landed
22 on?

23 A Probably the outside of his foot.

24 Q And why do you say that?

25 A Just because that's how people, generally people

1 don't, it's hard, your foot doesn't bend, you know, from
2 inside out as easily as it does from outside in.

3 Q So how could he have done a better job, according
4 to you?

5 MR. ZAWADSKY: Object, asked and answered. You
6 answer the question.

7 THE WITNESS: Just step squarely onto his foot.

8 MR. RUTENBERG: Meaning what?

9 MR. ZAWADSKY: Object, asked and answered.

10 BY MR. RUTENBERG:

11 Q What does it mean to step squarely onto a foot?

12 A Basically like your, like you normally walk. You
13 normally walk you step squarely on your foot, you don't
14 walk on the sides of your foot or up on the balls or the
15 heels or you don't tip toe around. Use the entire square
16 area of the bottom of your foot.

17 Q Did he receive any medical treatment?

18 A No.

19 Q Did he receive first aid?

20 A No.

21 Q If he did receive first aid, who would usually
22 administer first aid, if anyone?

23 A Well, I guess depending on what it is. I mean if
24 it was serious enough we would warrant calling an
25 ambulance, then obviously the paramedics would. We, you

1 know, we're trained in CPR, I mean we're trained how to
2 stop like bleeding and that if it's a cut or something
3 like that. I mean in this situation his first aid would
4 be basically sitting down and keeping his foot elevated if
5 it had come, if it was that serious.

6 Q Would you have noted that as treatment given?

7 A It would have been noted on the accident report,
8 yeah.

9 Q GX-14, is that right? The accident ---

10 A Oh, treatment, oh yes, treatment given. I would
11 have, it would have, it's noted on the accident report but
12 it would have been duplicated essentially on that if, if
13 that had been the case.

14 Q Okay, I have a question. So, you see across the
15 middle there, by the bottom, the top third, the bottom of
16 the top third it says accident incident and near miss?

17 A Yes.

18 Q What is an incident?

19 A I'm not sure. At the time I'm not sure the
20 wording, why we had incident noted on there. To me an
21 accident or a near miss, they're both incidents. So it
22 may have been just the, the way the form was constructed
23 and nobody ever caught that it was, maybe too, just an
24 unnecessary box to check.

25 Q Did he see a doctor?

1 A No, not that I know of. I don't believe he did.

2 Q And the company, did Dura-Fibre ask him to see a
3 doctor?

4 A I don't believe so, I don't believe, unless he
5 had any conversations separately from Jamie. But I don't
6 think he was asked or, you know, demanded to.

7 Q Did he violate any company policy?

8 MR. ZAWADSKY: Object, asked and answered.
9 Answer the question.

10 THE WITNESS: Well, the only policy I would say
11 is just what came out of this was the unsafe act from the,
12 from the findings of the safety team.

13 BY MR. RUTENBERG:

14 Q Is that considered a safety violation?

15 A In that case it was.

16 Q Okay, why did it say on this accident
17 investigation form, where it says did a safety violation
18 occur, why does it say no?

19 A I don't know, I think I either checked the wrong
20 box or something was going, something different, some
21 different thought process was going through my head at the
22 time.

23 Q Okay, but you signed it, correct?

24 A Yes.

25 Q Do you know whose other signature that appears to

1 be?

2 A Jamie Gonnering.

3 Q And so she, does she typically, did she typically
4 review the accident investigation forms at the time?

5 A I assume she reviewed them before she signed
6 them.

7 Q Did you fill out a near miss and incident form?

8 A It's essentially our accident report, yes.

9 Q Okay, and go ahead.

10 A Yeah, incident form that's, when I say accident
11 form that's the form that I'm referring to is what was
12 called the near miss incident form at the time.

13 Q And you said the employee fills this out?

14 A The employee fills out the top section with name,
15 date of birth, the first three lines. They fill out the,
16 well the lead, the employee would fill out the top, then
17 between them and the lead they would fill out basically
18 everything down to where the signatures are.

19 Q I'm sorry, I admit I was trying to get an exhibit
20 to put in front of you.

21 A Sure.

22 Q Could you just repeat what you just said?

23 A Okay, the employee would fill out the top three
24 sections, name, date of birth, city, address, all that
25 stuff. The, who, what, where, when and why would get

1 filled out between them and the lead and then it would get
2 passed on to me. They would fill out, they would answer
3 some of the questions that are towards the bottom, and
4 then all the way down to the signature, then the employee
5 would sign, and at that point then they would turn it in.

6 Q Let me put this in front of you so we can get
7 into it a little bit more specifically. So, what I'm
8 handing you is pre-labeled GX-15, and does this appear to
9 be a full, what is GX-15?

10 (Government's Exhibit No. GX-15 was marked
11 for identification.)

12 A The near miss and incident form.

13 Q Does it appear, and in particular what near miss
14 and incident form is it?

15 A The one specifically done for Tim Jacobs when he
16 landed on his ankle.

17 Q Does it appear to be a full, accurate and
18 complete version?

19 A Yes.

20 Q Is that your signature at the bottom?

21 A Yes.

22 Q And it looks like we have Ms. Gonnering's and Tim
23 Jacobs, would you agree?

24 A Correct.

25 Q The signatures, would you agree?

1 A Yep.

2 Q So, let's just be a little bit clear about which
3 parts the employee would fill out, versus what a
4 supervisor might fill out or what they might fill out
5 together. So, do you see on the left-hand part of the GX-
6 15, it says employee?

7 A Yep.

8 Q You testified the employee fills out all the
9 entire top section, right?

10 A The employee would fill out the top, yep.

11 Q And who would fill out the first row of boxes on
12 the next section that starts with date of near miss or
13 incident?

14 A The employee really should fill out the top
15 section there. Basically the employee and the lead, or in
16 this case the lead and myself. If it was just a plant
17 employee and a lead, together the two of them would fill
18 this out, as best as they could before turning it into me,
19 and then I would, you know, I would obviously review it
20 and, you know, if location treated didn't happen to get
21 filled in I would check that if there was any treatment.
22 I would basically go over it again with them.

23 Q And in this case do you recall, so in this case
24 did you and Mr. Jacobs fill in that first row in the
25 second section?

1 A Yeah, we must, either he did because he knew the
2 specific time, or we kind of filled it out together after
3 he came and reported it to me. I'm not sure exactly how
4 much of this form had already been filled out when he came
5 and told me. He may have brought it to me with the top
6 section already filled out, or when he came and told me
7 and I said, well, let's grab an accident report and we'll
8 start filling it out.

9 Q Moving down, do you see where it says medical
10 treatment on the left-hand side?

11 A Yes.

12 Q Who filled that out?

13 A I would have, most likely.

14 Q Do you have any reason to believe that you
15 didn't fill that out?

16 A No, he may have treated it, he may have X'd it
17 just because he, we had determined at the time we weren't,
18 we didn't need to send him in.

19 Q You mean the company and Kooy decided to send it
20 to the hospital?

21 A Correct.

22 Q Or to any other doctor?

23 A Correct.

24 Q Who filled in the description of near miss
25 incident?

1 A Probably myself when I was questioning him, you
2 know, about the incident.

3 Q And at the time you concluded that he, what part
4 of the body did you conclude was effected?

5 A Right ankle.

6 Q And what did you at the time conclude the injury
7 was?

8 A Sprain.

9 Q Did you check near miss accident?

10 A I did.

11 Q What is that?

12 A It was a little, at the time I guess it was a
13 little, I don't want to say confusing or kind of a, what's
14 the word I'm thinking of, kind of a, I'm not sure what I'm
15 thinking of. There's a near miss and there's an accident.
16 The way we had it listed at the time was near miss
17 accident , it's, I checked it, it didn't really seem. To
18 me, I saw the word accident, but I can see people see the
19 word near miss on there, it's hard to, it's a poor choice
20 of wording, let's just put it that way. To me it was a,
21 to me it was an accident, I guess, I don't know how we,
22 why the form specifically said near miss accident at the
23 time. That was, that got, I think that got cleared up at
24 a later time and I don't think it, it no longer says that.

25 Q When was it cleared up?

1 A I don't know, sometime since then. I don't know
2 specifically when, but I know there was some, I mean if I
3 just look at this now, that seems like kind of a
4 contradiction, is the word I was thinking of. It seems
5 like a contradiction. Again, there's a near miss and
6 there's an accident, but the way this was worded, I think
7 the wording was just, it could have been better and I
8 think that's what was cleaned up later.

9 Q So, you saw that it said near miss accident,
10 correct?

11 A Yep.

12 Q And did you see the asterisk attached to near
13 miss accident?

14 A Yes.

15 Q And what does the asterisk say?

16 A It says no disciplinary action taken.

17 Q Did you always consider this to be an accident?

18 A I considered it an accident from the get go.

19 Q Okay.

20 A I didn't consider, I mean as far as this, how
21 this was wording, you know, maybe poor choice of wording
22 aside, to me it was always an accident. And I mean,
23 discipline wasn't even, it wasn't even a thought process
24 of mine when I'm filling, when I'm filling these out.

25 Q What is your thought process when filling these

1 out?

2 A Basically just documenting the incident, the way
3 it occurred, and then it going up the chain and letting
4 the safety team make the determination from there on, you
5 know, what any follow-up should be.

6 Q Did you find that Mr. Jacobs had abused any
7 substances?

8 A No.

9 Q How do you know that?

10 A I didn't check anything on the form.

11 Q Where it specifically says substance abuse,
12 correct?

13 A Correct, and I believe he was sent in for a, he
14 was sent in for an alcohol drug test that afternoon, as
15 well, and the, I assume the, if it had come back positive
16 it would have been, I would have been made aware of that,
17 so.

18 Q Had he had alcohol drug problems at work?

19 A Not that I'm aware of.

20 Q At any point?

21 A Not that I'm aware of.

22 Q Did you find that he failed to obey rules?

23 A I did not check that.

24 Q Okay, would you have checked it if he failed to
25 obey rules?

1 A If I thought so.

2 Q So, what do rules refer to, if you don't think
3 he, he failed to obey rules?

4 A Again I don't know, that's open to a lot
5 interpretation if that's technically, that's safety rules
6 or just verbal, you know, rules or instructions that he
7 was given. I'm not certain what the, you know, deep down
8 what that, the meaning, or like I said, it could be open
9 to a lot of different interpretation.

10 Q By an employee?

11 A Or by any, yeah, by anybody.

12 Q Would you suspect that if you felt that he broke
13 a rule, a safety rule, a safety rule in particular would
14 you check failure to obey rules?

15 A If there was something blatantly obvious. Again,
16 if this was a forklift situation where he was cruising
17 around at a high rate of speed and ran into something
18 because he wasn't paying attention, that could be tied to
19 a rule on safe forklift operation.

20 Q Okay, so ---

21 A Nothing immediately stood out to me at the time.

22 Q To the extent you found Mr. Jacobs broke a rule,
23 do you not consider whatever rule he broke to be blatantly
24 obvious?

25 MR. ZAWADSKY: Object to form.

1 THE WITNESS: Ask it again, please?

2 BY MR. RUTENBERG:

3 Q When you testified just now that if he had, and
4 feel free to correct me, that if Mr. Jacobs had failed to
5 obey a rule that was blatantly obvious, you would have
6 checked failure to obey rules, correct?

7 A Yes.

8 Q Does that mean to the extent the rule that you
9 found that he did eventually break was not blatantly
10 obvious?

11 A Well the rule that we eventually determined he
12 broke, it was after, again it was after a discussion with
13 the safety team, and it was using the criteria on that
14 form. At that time, at the time I'm investigating I'm
15 not, my thought process isn't necessarily, well, did he,
16 is it a rule that he landed awkwardly on his foot. That
17 to me, it wasn't, I guess that wasn't, I don't want to
18 say, that wasn't an obvious breaking of a rule as a
19 carelessness on a tow motor would have been. The breaking
20 of the rule, or the discipline that was issued with the
21 rule was as a result of our process with the safety
22 incident report. So, I wasn't even thinking about that,
23 I'm just kind of looking at the situation, just on the
24 surface right now, or at the time.

25 Q But similarly, turning back to GX-14, which is

1 the accident investigation form, you similarly did not
2 write, you similarly checked no, that a safety violation
3 didn't ---

4 A Yeah.

5 Q -- excuse me, let me rephrase. You also found
6 consistent with the near miss and incident form that he
7 did not violate a safety rule, correct?

8 A Yeah, again either my thought process at the
9 time, I wasn't thinking disciplinary way, you know, I
10 wasn't thinking a disciplinary process down the line at
11 the time, or again, or I checked the wrong box. I don't
12 recall what my, clearly I made a mistake checking that
13 box, but I don't know what my thought process was at the
14 time when I checked it.

15 Q But you, did you testify earlier that you had
16 determined, prior to the safety meeting, upon filling out
17 the accident investigation form that he committed a, that
18 Mr. Jacobs committed an unsafe act?

19 A Well after, after I had filled this out I had
20 gone up and talked to Jamie after that. And as we
21 reviewed things and I, it was discussed that, you know,
22 this is not, this is an accident, this is something that
23 we need to bring to the safety committee.

24 Q Was it determined that he had violated an, that
25 he had performed an unsafe act?

1 A At that point we determined that, yes, it is, it
2 was considered an unsafe act, and it is something that
3 needed to be brought to the safety team.

4 Q Did Ms. Gonnering, when you say Jamie I assume
5 you mean Ms. Gonnering?

6 A Yes.

7 Q Did she conduct the investigation?

8 A No, this was a conversation her and I must have
9 had. I don't know if Luke was involved or not, but at
10 some point it was determined that, you know, yeah, I
11 checked the box that I shouldn't have and yes, we need to
12 treat this as a, an unsafe act leading to the accident.

13 Q Did you believe it was an unsafe act before you
14 spoke to Jamie Gonnering and Luke Benrud?

15 A I don't recall. I know I checked no, again I
16 don't know what my thought process was. My initial
17 thought that was, yes, just because of the way he, again,
18 came off the flight of stairs, the way he landed, that was
19 my initial, that was my initial thought.

20 Q Which is not reflected in GX-14 and 15?

21 A At this point in the, at this point in the day,
22 no. It was the next day then that I realized after I,
23 again, talked to them I realized, okay, yeah, this was
24 checked, the wrong box is checked. And at that point I
25 had gone back to Tim and said, hey, there's a couple of

1 amendments that need to be made on here. One was the type
2 of injury, I explained to him that I'm not a doctor, I
3 shouldn't have marked sprain, so I changed it to twist
4 because I can't make a medical diagnosis. And then the
5 other one was that the, you know, the near miss accident,
6 again, sounded contradictory to itself and that it wasn't,
7 it was being technically investigated as an accident, not
8 a near miss or near miss accident.

9 Q Well, couldn't you have just left near miss
10 accident unchecked, and then you wouldn't even have the
11 word near miss?

12 A No, because we didn't want to, I didn't want to,
13 again, this term itself I thought, again, was kind of
14 contradictory. I did not want to keep it checked, because
15 it's really, it's a, it's not a near miss. Yes, it's an
16 accident, but it's not a near miss. So I, I just verbally
17 explained it to him that we're treating it as an accident.

18 Q Have there been other circumstances where you've
19 checked near miss accident?

20 A Probably. If you asked me to remember one, I
21 don't.

22 Q What did you typically do if you believed there
23 was an accident? Did you check near miss accident or did
24 you leave it unchecked?

25 A I probably would leave it unchecked. I don't, I

1 don't recall.

2 Q Well, why did you check it here if you typically
3 left it unchecked?

4 A Well, I probably saw the word accident and that's
5 what made me check it.

6 Q No doubt that's what you're testifying to. But I
7 guess my question was if you said you, you testified you
8 typically left that check box unchecked when you found
9 that an accident had occurred, is that what you testified
10 to?

11 A I believe, I mean again, I'm going, I'm just I'm
12 trying to remember how many times I've filled this out
13 over the time.

14 Q Sure.

15 A To go back and say that I always did it this way
16 or did it the opposite way, and how many types of each,
17 I'd be just guessing.

18 Q Sure.

19 A That's my hunch, what I told you is my hunch.

20 Q So, I need to clarify. Did you believe this was
21 an unsafe act when you filled, that mister, did you
22 believe that Mr. Jacobs twisting was an unsafe act when
23 you filled out those two forms?

24 MR. ZAWADSKY: Object, asked and answered. You
25 can answer the question.

1 THE WITNESS: I believe I did.

2 BY MR. RUTENBERG:

3 Q Then what was the purpose of, and then so when
4 you met what did, when you met with Luke Benrud and Jamie
5 Gonnering did they just tell you to change the form, near
6 miss and incident form?

7 MR. ZAWADSKY: I'm going to object only because
8 I'm not sure he, Luke was there. Jamie was there, Jamie
9 was there for sure.

10 THE WITNESS: Yeah, after we discussed it she
11 probably showed me the form and said we need, this needs
12 to be amended, this is not a near miss accident it is an
13 accident. We need to, you know, white that out, whatever,
14 and cover it with Tim. Which is what I did the next
15 morning.

16 BY MR. RUTENBERG:

17 Q Was Luke Benrud there?

18 A I, he may have been, I don't know. I know Jamie
19 for sure was there, Luke I don't know. Luke was right
20 across the office from her, so he may have been privy to
21 that conversation.

22 Q Did she suggest this was an unsafe act?

23 A She suggested that we needed to, or we needed to
24 treat this like an accident and talk about it at the
25 safety meeting. Or let me back up, this conversation with

1 Jamie was the following morning. At that point we had
2 already treated it like an accident at the safety meeting,
3 and realized then the next morning, after all the
4 determinations had been made, that the report, that the
5 box was checked incorrectly, I guess.

6 Q Prior to this incident had you personally found
7 other employees committed unsafe acts?

8 A Before this, I don't recall.

9 Q Do you know if Jamie did, Jamie Gonnering?

10 A I don't want to speak to that, I don't know.

11 Q Typically when you fill out an accident
12 investigation form, if there was a safety violation would
13 you have set forth on the accident investigation form what
14 that particular violation would be?

15 A Not, no not necessarily. I would have just
16 checked the box and then there would have been, the actual
17 violation would have been talked about in the safety
18 meeting.

19 Q So, what is the appropriate box to check on this,
20 on the near miss and incident form if there is a near
21 miss?

22 A I would not have checked, I guess I would not
23 have checked any box. Again this, given that this is what
24 I had to work with I wouldn't have checked any box.

25 Q So, an unchecked box in your opinion would mean

1 near miss, correct?

2 A No, I guess I'm confusing myself here looking at
3 this. I, it, again near miss accident was confusing at
4 the time and I, looking back at it now it's still
5 confusing when you're asking me, well what would I have
6 checked in each situation, and which is part of the reason
7 why I think the wording eventually got cleaned up.

8 Q Yes, I don't think there's any dispute that it's
9 confusing. I guess, so are you unable to answer the
10 question where are you supposed to check, if anywhere, if
11 it's a near miss, just a near miss?

12 A Near miss, I guess looking at this the only
13 option is checking the box, because I know a near miss
14 does not require any discipline, and because that's stated
15 on there I guess I would look at this as, okay, it's a
16 near miss, I would check the box.

17 Q Okay.

18 A But at the time, again, and again this goes back
19 to what the thought process was at the time. At the time
20 I knew that this was an accident, which is why I knew at
21 the time, I knew at the time what I was investigating was
22 an accident.

23 Q Why?

24 A Because he had hurt himself. So that, I was
25 clear on that. But again at the time I must have saw the

1 word accident, and just checked the box thinking it said
2 accident.

3 Q And you filled out sheets like this previous,
4 correct?

5 A I must have, yeah.

6 Q Okay.

7 A I don't know how, and what the specific format
8 that I filled out, I don't know, I don't remember when
9 this particular version of this form came about, what
10 things were changed along the way or previous to that.
11 So, this particular form, how many times did I fill this
12 out, or have I ever, that I'm not certain.

13 Q Who created the form?

14 A Again, I assumed it was some combination of Jamie
15 and Luke, or the director of operations at the time and HR
16 at the time. I don't imagine there was any, probably any
17 union involvement.

18 Q Did you receive training on how to use the form?

19 A When I was trained to be a supervisor, I guess,
20 yeah, it was, you know, the first time I had to do one it
21 was gone through with me.

22 Q And do you recall what the appropriate way to
23 check or uncheck the box is depending on whether it's an
24 accident or near miss?

25 A Again, I don't recall if this form, when I was

1 trained a year earlier as a supervisor, I don't want to
2 say that this form was exactly what this form looked like.

3 Q Right, so I just want to be clear. My question
4 was, were you trained on that form, that version of that
5 form?

6 A I don't recall what type of formal training I
7 had.

8 Q What about informal training?

9 A If anything we probably covered it during a
10 safety meeting where Jamie took this form out and said
11 this is our new form, you know, and probably walked
12 through people how to fill it out.

13 Q But you have no specific recollection of that?

14 A No, no.

15 Q Mr. Jacobs signed that document, correct?

16 A He did.

17 Q Was he, did you lead him to believe that this was
18 a near miss that would not require disciplinary action?

19 A Well, if I had checked that initially I guess I
20 must have led him to believe that.

21 Q But as alluded to before was this, was this the
22 final version of the near miss and incident form
23 associated with Mr. Jacobs' ankle twisting?

24 A No.

25 Q You changed it?

1 A Yes, the near miss accident was changed, and
2 again the injury where I had sprain I must have crossed
3 that out and wrote, under other I think I wrote twist or
4 twisted ankle or something.

5 Q And did you change it before or after the safety
6 meeting?

7 A I believe it was, well, I know I went over it
8 with him, I know I went over it with him the morning after
9 the meeting had happened. Whether I physically adjusted
10 the form before and after, I don't remember.

11 Q You don't remember, I'm sorry, before or after
12 the safety meeting?

13 A Before or after the safety meeting, I don't
14 remember when it was physically changed. At some point is
15 when we discovered the discrepancy and made the change,
16 but I don't know if that was before, before or after.

17 Q Well, I'm going to hand you the revised near
18 miss, I'm going to hand you a copy of the revised near
19 miss and accident form, GX-16, Exhibit 16. What is GX-16?

20 (Government's Exhibit No. GX-16 was marked
21 for identification.)

22 A Revised version of the near miss incident form in
23 the Jacobs' incident.

24 Q Does it appear to be a full accurate and complete
25 copy?

1 A Yes.

2 Q Is that your signature at the bottom?

3 A Yes.

4 Q Who else signed it?

5 A Jamie signed it, and Tim had refused to sign it,
6 which I noted on there.

7 Q Is this the revised form you were referring to
8 before?

9 A Yes, yes the sprain has been changed to a twist
10 and the near miss accident was unchecked.

11 Q Okay.

12 A And this was covered with him the following
13 morning on, whenever that was, Thursday morning.

14 Q Okay, so I'll ask again. Did you find that
15 there, after all this review and all this time spent
16 working on the near miss and incident form, did you find
17 that the injury occurred as a result of substance abuse?

18 A No.

19 Q And how do you know?

20 A Because I didn't have any, I had no evidence to
21 suggest that he was intoxicated or under the influence at
22 the time, and the drug test that he was sent in for would
23 have come back positive if there was any substance abuse.

24 Q And in fact, again, the box was left unchecked,
25 correct?

1 A Yes.

2 Q And did you determine that the injury occurred as
3 a result of failure to obey rules?

4 A At the time, no.

5 Q And again, this still came, this is still the
6 form that was provided to Mr. Jacobs the next day,
7 correct, after the safety meeting, right?

8 A Yes.

9 Q Why was that box left unchecked?

10 A Because I, obviously we didn't associate the line
11 failure to obey rules with the safety violation, or the
12 committing an unsafe act.

13 Q So, committing an unsafe act is not ---

14 A Well, it is a safety --- yeah, I guess in
15 hindsight the box, should the box have been checked, yes.
16 But at the time, at the time initially when this would
17 have been filled out it wouldn't have had that
18 determination. And I guess when we went back and edited
19 it that was, I guess we did view that box as needing to be
20 checked, or we did, or we didn't check it.

21 Q What's the purpose of getting an employee's
22 signature?

23 A Just that they acknowledge that the, that they
24 acknowledge the form.

25 Q And that it's correct?

1 A I guess so.

2 Q Is an ankle twist an injury?

3 A Yes, at the time he twisted his ankle he told me
4 he was walking gingerly on it. That was, I consider that
5 an injury.

6 Q Okay, can you twist an ankle without, so there's
7 two, this can get a little confusing. So, the way I'm
8 understanding it is ---

9 MR. ZAWADSKY: Counsel, don't testify; just ask
10 him the question.

11 BY MR. RUTENBERG:

12 Q The way I understand it is he physically twisted
13 his ankle. Is that the unsafe act, the physical twisting
14 of an ankle?

15 MR. ZAWADSKY: Object to the form of the
16 question. Answer the question if you can.

17 THE WITNESS: Ask the question again.

18 BY MR. RUTENBERG:

19 Q Is the unsafe act the physical twisting of the
20 ankle?

21 A The unsafe act is the, the process that he took
22 for, the process that he took stepping on his foot. The
23 injured ankle was the result of the unsafe act of stepping
24 awkwardly like he did. That's what was determined.

25 Q But did he, he physically twisted his ankle

1 though, correct?

2 A Yes.

3 Q But that wasn't the unsafe act?

4 MR. ZAWADSKY: Object. Look, we've gone over
5 this five times, we're not, don't answer the question
6 We're done on this line of questioning.

7 MR. RUTENBERG: Excuse me, please answer the
8 question.

9 MR. ZAWADSKY: No, he's not answering the
10 question. You've asked him that repeatedly and he's
11 already explained it repeatedly. Do not answer the
12 question.

13 MR. RUTENBERG: That is not a reason not to
14 answer a question.

15 MR. ZAWADSKY: Yes, it is.

16 MR. RUTENBERG: No, it is not.

17 MR. ZAWADSKY: It's called harassment.

18 MR. RUTENBERG: No, it is not.

19 MR. ZAWADSKY: It's called harassment, counsel.
20 If you don't like it, tough. If you don't like it, tough.

21 MR. RUTENBERG: I'm not harassing him, I'm asking
22 him a question.

23 MR. ZAWADSKY: Then ask a new question.

24 MR. RUTENBERG: Why are you yelling at me?

25 MR. ZAWADSKY: Because you are asking in an

1 inappropriate fashion in this deposition.

2 MR. RUTENBERG: It is not inappropriate, I am
3 asking him about, a question ---

4 MR. ZAWADSKY: No, you're not.

5 MR. RUTENBERG: -- related to ---

6 MR. ZAWADSKY: No, you're not. He's already
7 answered, he's already testified again and again what the
8 unsafe act was. He's already testified again and again
9 the nature of the, of his perception of the injury. What
10 more is there to ask about?

11 MR. RUTENBERG: I'm going to continue my
12 deposition ---

13 MR. ZAWADSKY: You're going to do it properly,
14 counsel.

15 MR. RUTENBERG: Did the only reason, the only
16 basis that you can tell him not to testify is if I'm ---

17 MR. ZAWADSKY: Don't tell me what I can do.

18 MR. RUTENBERG: -- invading a privilege.

19 MR. ZAWADSKY: I'm telling you, an improper
20 conduct of a deposition is grounds to direct the witness.

21 MR. RUTENBERG: I am not ---

22 MR. ZAWADSKY: Yes, it is.

23 MR. RUTENBERG: I am very calm. I am asking him
24 questions. This is not ---

25 MR. ZAWADSKY: Whether you are calm or not is not

1 the issue.

2 MR. RUTENBERG: You can object to it and I'm
3 going to continue, but that does not make that improper
4 conduct, and I'm sorry you feel that way.

5 MR. ZAWADSKY: Yes, it does because you're asking
6 the same question over and over again. Do you need time
7 to maybe call your supervisor and find out what the term
8 harassment means?

9 MR. RUTENBERG: No, I don't, but I feel I'm being
10 harassed now.

11 BY MR. RUTENBERG:

12 Q So, can you tell me the injury, where it says
13 check, correct?

14 A Yes.

15 Q A cut is an injury, right?

16 A Yes.

17 Q That might occur because the unsafe act is maybe
18 slipping a knife through your skin, as an example, right?

19 A Yes.

20 Q What is a dropped object as far as an injury?

21 A Picking up a pallet and dropping it on your foot.

22 Q So, in that case the injury is actually what you
23 do to your foot, not the dropping of the pallet?

24 A The injury is the result of the action, yes.

25 Q Okay, so you see the distinction between, do you

1 see the distinction between an action and an injury?

2 A The action is the offense, the injury is the
3 result of it, yes.

4 Q Okay, that's fine. So, in this case a, is it
5 possible to twist an ankle without it being an injury?

6 A I don't see how.

7 Q Well, I mean can you step on an ankle and it not
8 hurt?

9 A Of course you can step on, of course.

10 Q I mean, you know, on the side of your ankle, on
11 the side of the foot, like you said?

12 A Sure.

13 Q So, would it be an unsafe act if somebody twisted
14 their ankle, but did not hurt themselves with an ankle, a
15 twisted, an injured twist?

16 A If they were careless in how they landed on their
17 foot, sure.

18 Q And out of curiosity, do you know what a sprain
19 is?

20 A Do I know what a sprain is, are you asking me to
21 medically define it, no.

22 Q Do you know what a strain is?

23 A Again, same thing, medical definition, no.
24 Basically a pulling of the, a pulling of the muscle or the
25 ligament I believe it is.

1 Q A strain?

2 A Is one of the two of them.

3 Q Okay.

4 A I know one is more serious than the other.

5 Q Do you know if Mr. Jacobs did any damage to his
6 ligaments or injuries, or excuse me, ligaments or tendons
7 or muscles when he twisted his ankle?

8 A No, I didn't know it at the time, and I don't
9 believe, no, I did not know that at the time.

10 Q Do you know of any particular damage or, excuse
11 me, do you know of any particular damage or physical harm
12 he did to his ankle generally?

13 A No.

14 Q Did Mr. Jacobs tell you why he did not sign this
15 updated form?

16 A I may have noted it in my conversation that I
17 documented. I think he just, he, I don't recall what, why
18 specifically he didn't want to do it. Like I said, I may
19 have documented it in my, in my form, but I don't recall.

20 Q Was he upset?

21 A Oh, yeah.

22 Q How so?

23 A Just very agitated about it. I know he was
24 complaining that, you know, he was complaining that stuff
25 changes all the time around here, I think that was one

1 statement that I remember him saying. But, I mean, he
2 wasn't, you know, he didn't use profanity or anything like
3 that, or he wasn't belligerent to the point of
4 insubordination. But he was clearly hot about it.

5 Q Did he explain to you what he meant by things
6 change a lot around here?

7 A I don't recall what he, if he elaborated on that
8 at all.

9 Q Based on the fact that it was determined Mr.
10 Jacobs injured himself when he stepped down the steps, was
11 it determined this was an accident not a near miss?

12 A Correct.

13 Q And since it was an accident and not a near miss
14 he was subject to possible disciplinary action, including
15 the assignment of points, correct?

16 A Follow the results of the safety team meeting,
17 yes.

18 Q Had his twist not been determined an injury would
19 it have been a near miss?

20 A If it had not, say that again.

21 Q When he twisted his ankle.

22 A Yep.

23 Q Had that twist not been considered an injury,
24 would this be considered a near miss?

25 A Well, the way it was defined, it was defined as

1 an injury. But I guess if you would, if that was going to
2 be defined as a near miss, then no.

3 Q Okay, because of an injury. Had the way he
4 stepped off the final stair not resulted in a twist, but
5 he still stepped off in the same way.

6 A Okay.

7 Q Would this have been considered a near miss?

8 A He probably would have not, I don't know, he
9 probably would not have reported that if he had just
10 stepped awkwardly and not hurt himself.

11 Q Well, let's assume ---

12 A You could have considered it a near miss. Would
13 he have reported it to me, you know, I don't know.

14 Q Sure, but my question wasn't did he report it to
15 you, let's just assume he reported it to you, the same
16 thing. He stepped off the stairs, in the same manner as
17 he did, but did not twist his ankle. Would that have been
18 considered a near miss?

19 A More than likely, yes, because there was no
20 injury.

21 Q And had there been no injury in this case, he
22 would not have been subject to disciplinary action,
23 correct?

24 A If had not been marked, if there had been, if
25 there was not an injury and it was looked at as an

1 accident it would not have gone to the safety committee to
2 review.

3 Q And therefore he would not be subject to
4 disciplinary action, correct?

5 A Correct.

6 Q I'm going to refer you to GX-17 which I'm handing
7 to you now. Do you recognize GX-17?

8 (Government's Exhibit No. GX-17 was marked
9 for identification.)

10 A I do.

11 Q What is GX-17?

12 A That's the safety incident report that was used
13 by the safety team in the Tim Jacobs' ankle twisting
14 incident.

15 Q And this was the form you discussed before that
16 the company put together and the union had some input
17 into?

18 A Correct.

19 Q So, for instance maybe the amount of property
20 damage, et cetera?

21 A Correct.

22 Q I want to go through the categories just so I
23 understand what they mean. What does past behavior or
24 history of unsafe acts mean?

25 A Just how many, what type of safety or, what type

1 of safety record this employee has.

2 Q And how is it determined how many points there
3 are?

4 A How is it determined?

5 Q For that category, yes?

6 A Well every, the farther back you, or the more
7 incidents you have in a certain amount of time, I guess
8 determines what, I mean each, each box there is pretty
9 self explanatory as to what, you know, how many points are
10 going to be assessed based on the timeframe and the
11 frequency. Who came up with this, again, this was the
12 company and the union. The company, I believe, put the
13 wording together, and then the union was brought into it,
14 you know, for input they had. How much input they had
15 into the specific determining, okay if zero, if none, if
16 there's been no incidents over the last three years it's
17 going to be a zero. I don't know who specifically came up
18 with each category or each point system or timeframe, I
19 guess.

20 Q So, let's back up here. So, typically the safety
21 committee fills out this form together, is that right?

22 A Each, I believe how it worked is everybody in the
23 room was given a copy of this, and they would go through
24 and talk about each, they'd talk about it as a group and
25 determine a line score, you know, each line as a group.

1 Some of them are, you know, some of them are pretty,
2 obviously they don't need any type of discussions, they're
3 pretty black and white like property damage or actual type
4 of incident. Either you had medical treatment or first
5 aid or none. The first, really the second and the third
6 are the ones that are kind of, maybe open to a little bit
7 of discussion.

8 Q Does each individual fill out their own sheet and
9 then an average is taken?

10 A I don't know if there was an average. I think, I
11 think everybody maybe wrote their opinion on there and
12 then everyone kind of went around the room and read off
13 what their number was, and then again there was, you know,
14 any discrepancies. Well, we have a couple people who said
15 two, a couple people who said three, then we would, you
16 know, talk further from there and, again, come to an
17 agreement at some point.

18 Q Does the company keep those sheets?

19 A The ones that were handed to the employees, I
20 don't know. I think they were probably all turned in.
21 Whether they're kept on record or not, I'm not sure.

22 Q So, what happens when you tally up the sheets,
23 excuse me, tally up the line scores?

24 A So, we tally up the scores and we talk about, so
25 we have our subtotal which came to eight, then other

1 contributing factors is just if there's anything else that
2 we talked about that would be a basis to take points off,
3 I guess. And then the final total is brought, brought
4 down, and then going off the score guide is what
5 determines, you know, whether there's points assessed, or
6 as it says on here just documenting or coaching.

7 Q Does the company make personnel, beyond
8 termination does the company make personnel decisions
9 based on how many, based at least in part on how many
10 disciplinary points an employee has?

11 A Well there is some jobs in the plant that are
12 interview based. So, if for instance, a lead position, a
13 dry end position, a maintenance position and one other
14 position are all interview based positions. So, if there
15 were multiple employees all, you know, interviewing for
16 the same spot, I guess a disciplinary record, a discipline
17 record could be a factor in whether they were given that
18 job or not. Somebody who has a attendance issues, you
19 don't want to promote somebody if you have one guy who has
20 had attendance issues and another guy who doesn't. The
21 guy with the attendance issues who is sitting at, you
22 know, 18 points because of it, that may be a strike
23 against him in getting this position.

24 Q Have you sat on any sort of promotion committees
25 or been in involved in any sort of promotions for other

1 people?

2 A I've been on a few interviews for dry end
3 operators. I know I've been on some, just some external
4 issues for when we hired. When I was promoted, or when I
5 was going to get promoted to my current position I wasn't
6 on the external candidate to take over for my position.

7 Q And what about for internals?

8 A Internals, yeah, dry end operators I've been
9 involved in. I'm not involved in looking at disciplinary
10 records, that's human resources' gig. But I'm part of the
11 interview panel with the asking of the questions and
12 determining, you know, at least initially is this
13 individual worthy of consideration from that point
14 forward.

15 Q Okay, so thank you for that. So moving back to
16 past behavior or history of unsafe acts. Based off of the
17 rubric what, what do the employees look at, those sitting
18 on the safety team committee look at to determine how many
19 points an individual would receive under the past behavior
20 or history of unsafe acts?

21 A Well, this line one is, again, more of a, I guess
22 a cut and dry type thing, whereas basically HR is going
23 back through their personnel file and looking for similar
24 safety, safety incidents, and then just looking at the
25 dates of those and then obviously they fall under this

1 particular category. In this case, as it says, it's been
2 less than one year since any other injury or unsafe act.
3 So, there was something in the previous year that
4 attributed to that score of a three.

5 Q Okay, but to be clear it doesn't say any unsafe
6 incidents, it says any injury or unsafe act, correct?

7 A It says past behavior or history of unsafe acts.

8 Q Right, but to actually look at what, how you
9 actually determine the specific score is merely an amount
10 of saying how many times an individual has been injured,
11 or, and or unsafe acts, right?

12 A Yes, that's what it says, yes.

13 Q Why does it say, so if that's the case the more
14 times an employee has been injured in the past, X amount
15 of time, whether it be six months or a year or two years,
16 can impact the amount of disciplinary points they get in
17 the future, is that right?

18 A It impacts the number of points on this
19 particular line.

20 Q Right, which then of course impacts the total
21 number of disciplinary points they might be ---

22 A Yes, it doesn't necessarily mean it's going to
23 lead to discipline. If they get a three or a four on
24 this, and they get zeros all the rest of the way down,
25 ultimately it's not going to lead to any formal discipline

1 other than, again, possibly a coaching session.

2 Q Okay, an unsafe act, is that, as that term is
3 used here is unsafe act the same phrase, the same term and
4 meant in the same way as it is used in the labor
5 agreement?

6 A I believe so. That's what she's, what HR is
7 going off of, is past unsafe, or past documentations of
8 unsafe act to count towards, you know, this particular
9 line.

10 Q But, in fact, if any, in this case what unsafe
11 act or injury was taken into account?

12 A For previous, I don't know what the previous
13 incident was.

14 Q And if Mr. Jacobs had not been injured in the
15 last year, or performed an unsafe act, in fact he would
16 have had a total of five points which would not have
17 resulted in points being assigned, is that right?

18 A Correct, or I mean if it had been, if it had been
19 a year-and-a-half since his last incident, then he would
20 have gotten two instead of three, or if it ---

21 Q Right.

22 A Or if this was his first one, then yes, it would
23 have been a zero.

24 Q But would you agree that taking injuries at all
25 into account might dissuade people from reporting

1 injuries, knowing that in the future it could be held
2 against them in a future disciplinary action?

3 A I don't think my opinion on the matter
4 necessarily means anything. The form is what it is. It's
5 what was put together and agreed upon by the union.

6 Q Sure.

7 A If the union had issues with that, then it would
8 have been their responsibility to make a bigger stink
9 about it at the time it was put together.

10 Q May or may not be true, I'm not here to argue on
11 that. I'm just asking about your opinion?

12 A If a, if past injuries would be, would dissuade
13 them from, from reporting, possibly. But at the same time
14 if the penalty for, if there's a penalty for not reporting
15 and it's found out, you're more than likely, you're better
16 off reporting. Because you're, just because you report
17 and if it turns into an unsafe act, that doesn't
18 necessarily mean it's going to lead to discipline.

19 Q Sure, but it doesn't say injury that led to
20 discipline, it just says injury, does it not?

21 A Yes.

22 Q Okay, so it says any injury, right?

23 A But I know, but I know if I don't report
24 something I'm going to get written up, and it's found out.

25 Q Okay.

1 A If I do, so you can look at it as, well what's
2 the lessor of two evils.

3 Q So whether you report or not report could lead
4 to disciplinary action for not reporting, or for more
5 harsh disciplinary action later on down the road because
6 of this line score, correct?

7 A If you show a tendency to get injured a lot,
8 yeah, I mean yes, it's going to, going to not look
9 favorably when it comes to this particular line item on
10 this form.

11 Q Why does it make a difference if you're, what
12 does it make, why is it important if somebody get injured?
13 I mean, why is it important if somebody had gotten injured
14 a lot in the past?

15 A Because it shows a trend of just unsafe work
16 practices, or again, carelessness, recklessness.

17 Q But before you testified that one could get
18 injured without careless or recklessness?

19 A Sure, but you still look at the, you know, you
20 look at the severity, well, let me back up. Never mind
21 what I was about to say.

22 Q Let's look at, you can keep that out, GX-17, I
23 want to look at GX-45, which I'm handing to you now. Do
24 you recognize GX-45?

25 (Government's Exhibit No. GX-45 was marked

1 for identification.)

2 A I did not put it together, but I can tell you
3 what it is.

4 Q What is it?

5 A It's a list of all the points that Tim Jacobs had
6 accumulated that led him to, this would have been put
7 together by Jamie Gonnering prior to his dismissal to show
8 the history of his points dating back to 2011.

9 Q So, 2013, or excuse me, May 22nd, 2013 was the
10 date that he was given these final four points, correct?

11 A Yes.

12 Q And in fact was, is the date on Exhibit 17 in
13 front of you, correct?

14 A Yes.

15 Q So, what is the one safety, how many safety
16 incidents had there been in the two years prior to the
17 ankle twisting?

18 A It looked like there was three.

19 Q Where?

20 A July 13th, 2011, there was four points for a
21 safety incident report, don't know, I do not know the
22 circumstances behind that. October 18th, four points,
23 same thing, for a safety incident report, and October 25th
24 he was given zero points in regards to another safety
25 incident.

1 Q It looks like it was gained four back, is that
2 right?

3 A That was after 10/25. He'd gone at, he would
4 have gained four back three months after the previous
5 incident. So the gained four back would have happened
6 November, like January 25th.

7 Q Not that we have to get into it, but I believe in
8 that case it was because there was, does the company have
9 a policy that they need to be given, that they need to
10 provide, that they need to assess points within three
11 days?

12 A I believe it's, it was either three or five days
13 once the, once all the facts of the incident are known.

14 Q Okay, well ---

15 A I believe it was three days at the time.

16 Q Let's just assume that's what happened with the
17 10/25 and if you disagree we can talk about it, but I
18 don't think it's material for now. So, 10/18/12, do you
19 know what happened there?

20 A No, I don't.

21 Q But had he not been assigned points, those four
22 points, he would have, which were the only points he
23 received in the last year, he would have actually had a
24 point removed, is that right?

25 A Well, no, he got four points for being sick two

1 months prior to this. On March 19th of 2013 he got four
2 points for being sick.

3 Q Is being sick the same as being injured?

4 A No, sick is calling in sick, calling in absent
5 from work.

6 Q All I'm looking at are how many injuries or
7 unsafe acts he had in the previous ---

8 A Sick, being, calling in sick would not have been
9 looked at as a, as an injury or as, it would not have
10 taken into account for that.

11 Q So it looks like potentially the only unsafe act
12 he had in the previous year was on 10/18/2012?

13 A 10/18 and 10/25, there was two incidents.

14 Q One of which was --- now, if the points are
15 gained back does that still count as an injury or unsafe
16 act for the purposes of past behavior history?

17 A No, gaining points back just shows that they've
18 gone three months straight or 90 days, I forget whichever
19 it was, with no write ups, and at that point they get four
20 points back.

21 Q Okay.

22 A No write ups, call ins, anything like that.

23 Q I'm concerned you might not have understood the
24 question. So, just to be clear, when the points are
25 gained back?

1 A That has nothing to do with this.

2 Q Okay, so do you still consider that incident as
3 one of the injuries or unsafe acts?

4 A Yes, the incident still occurred. The fact that
5 they got points back three months after that is irrelevant
6 to the fact that the incident still occurred.

7 Q I want to talk about that incident as it relates
8 to our current Exhibit 17. So, what I'm going to hand you
9 is GS-29, 30 and 47. Feel free to take a look at 29, GX-
10 29, 30 and 47 and let me know when you're done.

11 (Government's Exhibit Nos. GX-29, GX-30, and
12 GX-47 were marked for identification.)

13 A Is this the same as, oh never mind, never mind.

14 Q And let me know when you've taken a look.

15 A Okay.

16 Q Do you recognize these documents?

17 A Yes.

18 Q What are they?

19 A Dura-Fibre accident form from an incident on
20 October 18th, 2012, subsequent safety incident report that
21 the safety team went over, and the discipline that came
22 out of that documentation.

23 Q Okay, so what did happen, what did, what was Mr.
24 Jacobs cited for?

25 A He was cited for general rules, one, number four,

1 I don't know, it's not written on there what that
2 specifically was but that's ---

3 Q That's an unsafe act?

4 A It, that's an unsafe act, okay, then that's what
5 he was cited with.

6 Q Did you conduct the investigation?

7 A I definitely signed the accident report. I don't
8 recall if I did the investigation or not.

9 Q And what does the accident report say?

10 A The accident report states that Tim had gone
11 downstairs into the boiler room area, he tripped over a
12 hose that was laying across the floor, and that he
13 apparently told me that he had possibly re-aggravated some
14 lower back pain.

15 Q So, someone else had put a hose across the floor,
16 right?

17 A Yeah, a hose had, a maintenance person had
18 apparently not picked it up or wound it back up after
19 they'd been using it.

20 Q And it shouldn't have been there, right?

21 A It should not have been there.

22 Q And I note, did you sign near miss accident on
23 this form as well?

24 A I did.

25 Q And was this supposed to be an accident or near

1 miss?

2 A It would have been an accident after he told me
3 that he had possibly re-aggravated some back pain.

4 Q And again, he was cited for tripping over a hose
5 that should not have been there?

6 A Well, he was cited for committing the unsafe act
7 for tripping over the hose, yes.

8 Q Was he the one who left the hose there when you
9 tripped over it?

10 A I don't believe so. I believe they found who the
11 maintenance person was who left it there, if I recall.

12 Q Okay, do you know if he was cited?

13 A I don't want to say for sure if he was or not.

14 Q Just curious about that. A question, were you on
15 the safety committee?

16 A I was not.

17 Q Okay, so you concluded that he had an accident,
18 is that right?

19 A Yes, because of, yes.

20 Q Well, on GX-47, on the safety incident report,
21 the actual injury incident type is left blank, is it not?

22 A It appears so.

23 Q What is, is the near miss accident risk analysis
24 filled in?

25 A Yes.

1 Q With what number?

2 A Two.

3 Q What does that number equate to?

4 A A chance for minor injury to occur.

5 Q But that no injury necessarily did occur,
6 correct?

7 A I don't know what the eventual, if it was a re-
8 aggravation of a previous lower back pain. I don't know
9 how long that stayed with him if that was a, if that
10 continued being a, an ongoing thing I don't know.

11 Q But you concluded it was an accident and that's
12 what it said on the accident form, right?

13 A Yes.

14 Q All right, would you agree that GX-47 is
15 inconsistent with that conclusion?

16 A I don't want to speculate as to why this actual
17 injury incident type was left blank.

18 Q And not only was it left blank, however, but the
19 near miss was not left blank. Because I would imagine you
20 would fill one or the other in, is that right?

21 A Yes. It's an actual injury or near miss
22 accident, yes.

23 Q Right, so --

24 A So, this is, so this was left blank because they
25 went down to this next box.

1 Q A near miss accident?

2 A Yes.

3 Q Which doesn't exist, right?

4 A Well, again, there you go back to the, you know,
5 there's, there's a near miss or there's an accident.

6 Q And a near miss is no injury?

7 A Correct.

8 Q Okay, I'm sorry did I interrupt you?

9 A No.

10 Q Okay, if we can turn back to GX-17, please?

11 A Which one's that?

12 Q That's the safety incident report filled out for
13 Mr. Jacobs' ankle twist. Excuse me, for the event that
14 led to his ankle twist. What does intent mean?

15 A I guess it kind of covers of, you know,
16 physically what was the employee doing at the time that
17 eventually led to the accident or the incident.

18 Q Okay, and how many --

19 A Was it, was it, you know, on, on the scale of, as
20 zero indicates just there's no control whatsoever all the
21 way up to engaging in, you know, reckless behavior.

22 Q What would zero be? What are some examples of
23 that?

24 A Again, something falling off of a, something
25 falling off a shelf or falling off the machine and hitting

1 him in the shoulder. Or, yeah, I think that's a perfect
2 example.

3 Q Okay, assuming he didn't say knock into the
4 machine?

5 A I'm sorry?

6 Q Assuming he didn't say, knock into the machine or
7 something like that, right? Well, something can't
8 actually fall off a machine onto it, it doesn't matter.

9 A Yeah, if something falls off, if a, if a,
10 something being stored up above your head or something
11 falls off, the vibration of the machine and it falls and
12 hits you in the shoulder, again, that would be there's no,
13 there's no control the employee necessarily has over that.

14 Q And what was the careless overlooked minor detail
15 or precaution that he should have taken?

16 A I guess when we, I guess when we looked at that
17 we must of looked at the fact that his awkward step or
18 his, his awkward step off the, off the step was the reason
19 we gave him the one and we didn't feel it was anymore
20 serious than that.

21 Q Tell me about knowledge or skills. What does
22 that mean?

23 A That's just how much experience the person has.
24 How many times has the person been in that similar
25 situation. How much tenure they have with the company.

1 Basically a, you know, should they have known better or
2 how many times, like I said, how many times they've done
3 this same thing in the past with, with no issues.

4 Q So, it might be higher the more experience you
5 have?

6 A It could be because you're, the expectation is
7 that you're a more educated, experienced employee who
8 should know better.

9 Q And what was the previous direct experience or
10 event in a similar situation?

11 A What was probably looked at there was that he
12 had, he was very familiar with the outlay of the machine
13 and the steps and the location of all the hazards. And,
14 again, he'd been in that situation countless times before.
15 The situation was repeated numerous times in the past with
16 no, with different outcome.

17 Q So, he went up and down hundreds, thousands of
18 times?

19 A He went up, he went up, down the stairs hundreds
20 of times, yes.

21 Q Okay, and one time he tripped down?

22 A Yes.

23 Q One out of hundreds?

24 A Or, yes.

25 Q Okay, possibly more?

1 A It could be more.

2 Q Okay, so is actual, we talked about this a little
3 bit, but I see there it says actual injury incident type
4 or near miss accident risk analysis. How do you determine
5 which one of those, does the company, does the safety
6 committee only fill out one of those?

7 A Appears that's the way it's, was worded at the
8 time was that the top one was used for injuries, the
9 bottom one was used for near misses.

10 Q Okay, and in this case which block was used?

11 A Actually, actual injury/incident type.

12 Q And how many points were issued for this one?

13 A One.

14 Q Why?

15 A Well, it was determined that there was no
16 treatment given. It was not, so it wasn't a near, it
17 wasn't a near miss. There was no medical treatment given.
18 So, first aid would, was basically a, first aid other
19 than, basically, take it easy kind of thing was, I
20 believe, the only first aid that was given. Because we
21 didn't wrap his ankle or anything like that. It was,
22 basically, it, it, the near miss, the no treatment given,
23 I don't know why, I don't know why no treatment given was,
24 was written in there.

25 Q Should this have been near miss, no treatment

1 given?

2 A It, I mean, no treatment given isn't written in
3 there so I'm not sure, I'm not sure what the determination
4 was for first aid. If it was a, he, I don't know why, I
5 don't know why they came to the, why we came to one.

6 Q Well, you were there, right?

7 A Yeah, yeah, I was.

8 Q At this meeting, and you also told me, you
9 testified today that he did not receive first aid or you
10 do not know of any --

11 A Yeah, I did not, I did not know of any treatment
12 that he was given or any, or any, any medical attention.

13 Q Which is consistent with the other forms you
14 filled out where it says no treatment given, right?

15 A Yes.

16 Q Or no medical attention?

17 A Yes. So, I don't know why, I don't know why we
18 came to the decision of one of first aid.

19 Q Is that another gray area?

20 A It appears so.

21 Q Tell me about the other contributing factors.
22 What is that?

23 A Again, that would be if there's anything else
24 that's not documented in, you know, any, anything that's
25 not covered in this that could be looked upon in their

1 favor.

2 Q What are some examples --

3 A Well, the hose incident. If I could go back to
4 that other incident?

5 Q Yes, of course.

6 A The hose incident was, there was the contributing
7 factors. They took off three points on that because in
8 actuality the hose should have been put away.

9 Yes, he tripped over it. Yes, he should have
10 been more careful, but in the end the hose should have
11 been put away and this wouldn't have happened. So, in
12 that particular situation that was taken into account and
13 he was, there was some, and there was some points knocked
14 off for that.

15 In this case we did not find any other
16 contributing factors. It was a fairly simple, you know,
17 or I don't want to say simple, but it was a fairly, fairly
18 black and white incident as to what exactly happened.
19 There was nothing else. It wasn't that the, the floor was
20 slippery where he stepped, the steps were slippery,
21 anything like that.

22 Q What were the stairs made of?

23 A Steel. They were graded so plenty of traction.

24 Q And are the edges of the stairs, are they graded?

25 A Yeah. All, the entire, the entire stair is, is,

1 it's, I don't want to say they're graded is the right,
2 it's, there's, it, it's made of just individual steel like
3 beams across, like very narrow ones.

4 Q Okay, they're narrow?

5 A Yeah, but I mean, they're only spaced an inch
6 apart together. So, it's, it's a clear, you know, step
7 for, for a person. They're --

8 Q Roughly how many inches is each riser in width?

9 A The width of the, the stairs?

10 Q I would call that the length. The width, how
11 much spaces --

12 A Oh, probably 10 inches.

13 Q Okay, and --

14 A Maybe a foot.

15 Q Is there a definition, do the stairs have any
16 sort of tape on them, black and yellow emergency tape?

17 A No. The surface, I mean, the surface of the
18 steps themselves doesn't allow you to actually put
19 anything on there. Because, again, they're just, they're
20 just a series of vertical metal, vertical pieces of steel
21 that form the, the actual step.

22 Q Getting back to GX-17 what does, under the other
23 contributing factors section, row, what are the
24 definition, what's the definition of minor?

25 A It's --

1 Q Let me ask you this. I'm sorry to interrupt.
2 I'll ask a different question. Does the company have a
3 written definition of minor?

4 A Not that I've ever seen, no.

5 Q Does the company have a written definition of
6 substantial?

7 A Not that I've seen.

8 Q Significant?

9 A No.

10 Q How about extraordinary?

11 A No. It's a, basically subjective opinion. You
12 know, when everybody talks about it, hey, if this, this
13 hose should have been put away. You know, is that a, is
14 that a minor thing. No, it is a pretty significant thing
15 because that caused the, that partially caused this. So,
16 it's, it's looked at, you know, we don't, just kind of
17 looked at what's their, kind of almost on a one-to-five
18 scale almost.

19 Q Do you know if Lonnie Zeppel had been at a
20 previous safety meeting?

21 A I'm, I'm not sure.

22 Q How about Mark Woody?

23 A I am not sure. Mind if we take a couple minutes?

24 Q Sure. Could we get back here at --

25 A I just want to text my wife and let her know I'm

1 not going to be home on time.

2 Q Okay, how about 10 after?

3 A Sure.

4 (Off the record.)

5 BY MR. RUTENBERG:

6 Q What happened after the safety committee, so the
7 safety committee, did the safety committee meeting
8 determine that Mr. Jacobs would receive four points?

9 A Yes.

10 Q Okay, was there any dissent as to that at that
11 meeting?

12 A I don't recall any.

13 Q What happened after the meeting as far as
14 continuing on with the, did you have a meeting afterwards
15 with Ms. Gonnering and/or Mr. Benrud after the meeting?

16 A Yeah. I believe we talked, and I think it was at
17 that point then that Jamie must have realized that, hey,
18 this four points is going to put him at 24. I think
19 that's when the, I think that's when we, at least I was,
20 at least that's when I was, when I had realized that, yes,
21 this is going to lead to a termination.

22 Q How soon after the safety committee meeting was
23 that?

24 A It's probably right after.

25 Q Was it in the same room as the safety committee

1 meeting?

2 A No. I think we were either talking in Jamie's
3 office of Luke's office.

4 Q Did Jamie have her point list with her?

5 A She must have to come to that determination.
6 That's what I'm assuming she must have looked at to figure
7 that out.

8 Q Was Ms. Gonnering at, never mind. So, I want to
9 hand you what I've pre-labeled as GX-18. So, Exhibit 18,
10 actually. Do you recognize Exhibit 18?

11 (Government's Exhibit No. GX-18 was marked
12 for identification.)

13 A Yes.

14 Q What is it?

15 A This is the discipline slip that was issued to
16 Tim Jacobs in regards to the ankle incident.

17 Q Okay, and this was provided to, does this appear
18 to be a full and accurate and complete copy?

19 A It is.

20 Q Is that your signature?

21 A Yes.

22 Q Under supervisor?

23 A Correct.

24 Q Okay, and is this handwriting yours?

25 A Yes.

1 Q When did you write this discipline slip?

2 A This would have most likely been written Thursday
3 morning or the morning of the, the 23rd. I believe that
4 was Thursday.

5 Q Is this the day after you had that follow-up
6 meeting with Luke Benrud and Jamie Gonnering?

7 A This, yes, this would have been, the follow-up
8 meeting took place the Wednesday of the safety meeting.
9 This would have been the, the next day, Thursday, yes.

10 Q Okay, and it was determined at that meeting you
11 had after the safety meeting with those two individuals
12 that Mr. Jacobs would be terminated, correct?

13 A Yes.

14 Q Okay, we've covered what the safe act was. The
15 Dura-Fibre employee handbook 10, what is that referring
16 to?

17 A Believe Jamie had asked me to reference that, as
18 well, in this particular case --

19 Q Had that been, go ahead.

20 A Yeah, Dura-Fibre employee handbook, page 10,
21 safety policy. I believe she was, she had a thing at the
22 time where she wanted to reference the employee handbook
23 when applicable in addition to any union contract
24 sections.

25 Q Okay.

1 A I don't remember the specifics as to why she, you
2 know, why she wanted that.

3 Q Did anyone ever argue that the handbook, are you
4 aware of any employees who have argued that the handbook,
5 page 10, or handbook is not per the labor agreement?

6 A No.

7 Q Okay, how about is not a source for safety
8 polices?

9 A No.

10 Q Okay, did the safety committee meeting, did the
11 folks at the safety committee meeting consider the
12 handbook, page 10?

13 A No. We would have just considered the, they
14 would have just gone off the safety incident form.

15 Q So, this was added after the fact?

16 A This was, when we put the, when we wrote, when we
17 put the discipline together. Yes, my, I put the general
18 rules group one which came out of the, the safety incident
19 report as it says on here, and then yeah, then Jamie had
20 asked me to add the separate entries referencing the, the
21 handbook.

22 Q But, in fact, those points were not awarded for
23 his, or excuse me, issued because it's employee's
24 responsibility to work safely, correct?

25 A Correct. It was the, the four points, the four

1 points came from the, the union handbook violation. The,
2 the committing an unsafe act.

3 Q Did Ms. Gonnering leave the company, was she
4 terminated, laid off, or did she leave on her own?

5 A She left freely.

6 Q Okay, did she tell you specifically what to write
7 with regard to general rules group one?

8 A I believe she did.

9 Q Okay, is that typical of the way, did she
10 generally tell you what to write with the discipline
11 slips?

12 A Well, in this, in this case, like I said, there
13 was something going on at the time that I'm not, I'm not
14 entirely sure of that we needed to reference the employee
15 handbook during disciplines when, you know, when
16 applicable.

17 Q Do you have any idea, though you're not sure of
18 what was that something, what was going on at the time?

19 A I don't, I, honestly, I don't know.

20 Q Was there a case against the company?

21 A I don't, I think it might have been just a, might
22 have been just a recommendation by somebody. I don't
23 know.

24 Q Okay, when was Mr. Jacobs terminated?

25 A 11:45 a.m. on May 25th.

1 Q Was there a meeting?

2 A Yes.

3 Q Who was at that meeting?

4 A Myself, Luke, Jamie, Tim, and I believe probably
5 the, at least three of the, maybe all four of the union
6 leaders at the time.

7 Q Okay, do you know who those were?

8 A Steve Wilz, Tim Voelker, Dan Nett, and I think
9 those because Tim was, Tim Jacobs was the fourth member.
10 So, I believe all three were probably present.

11 Q Were there any objections from the union at the
12 meeting?

13 A I don't recall the specifics. I think they, I
14 don't, from what I remember documenting is that there was
15 some conversations after the fact. But, the, the actual,
16 after it was, after he was told that he was being
17 terminated I just seem to remember it actually being a
18 lot, maybe lower key than I had thought that it might
19 have. They had some conversations after we left the room
20 and I don't know what, obviously, took place there. But,
21 the actual termination process went fairly smooth for
22 considering the circumstances.

23 Q Did Mr. Jacobs yell?

24 A No, I don't believe he did.

25 Q Did he swear?

1 A I don't think so.

2 Q Okay, what did he say?

3 A I, honestly, I don't recall what he said.

4 Q Okay, Dura-Fibre assigned those final four points
5 as a result of your, as a result of your conclusions to
6 your investigation, correct?

7 A A result of the safety incident report,
8 determinations by the safety team, yes.

9 Q And you opened your investigation because Mr.
10 Jacobs, did you open your investigation because Mr. Jacobs
11 reported his ankle twist to you?

12 A No. The investigation was opened because of the
13 accident itself. He was not, he was not investigated
14 because he reported the accident. It was the, it was the
15 result of the accident.

16 Q Okay, left me rephrase, and you opened your
17 investigation because Mr. Jacobs reported that he stepped
18 awkwardly on the long step, on the last step?

19 A My, yes, my investigation was reported because of
20 the accident itself, which is required.

21 Q Okay, I want to refer you back to GX-21 which is
22 your statement from July 26, 2013. You indicated that you
23 changed, in your statement that you changed the near miss,
24 why? That you unchecked in your near miss accident, why?

25 A Because it was not a near miss. That it was an

1 accident, or that I, either that or, well, no. Because it
2 wasn't a near miss. It was being looked at as an
3 accident.

4 Q You did write this, correct? You know, we
5 discussed that, right?

6 A Yes.

7 Q All right, and this was done July 26th, 2013?

8 A Yes.

9 Q All right, if you can look at the bottom
10 paragraph of what's labeled as DURAFIBRE Bates No. 00099?

11 A Yes.

12 Q Could you read the second sentence of that
13 paragraph?

14 A Starting with, I told him?

15 Q Yes.

16 A I told him that the term contradicts itself
17 because there is an accident and there is a near miss but
18 there's no such thing as a near miss accident.

19 Q Keep going.

20 A I told him, though, that the incident was still
21 considered and always viewed as an accident.

22 Q Okay, and then just the next one.

23 A Tim commented something to the affect of that's
24 my whole point, these forms keep changing all the time.

25 Q So, as we discussed you found the near miss

1 accident to be internally inconsistent, correct? Is that
2 --

3 A The, the term, yes.

4 Q Okay, I want to refer you to, I'm handing over to
5 you GX-37.

6 (Government's Exhibit No. GX-37 was marked
7 for identification.)

8 MR. ZAWADSKY: Do you want this still in front of
9 him?

10 MR. RUTENBERG: No, it doesn't --

11 BY MR. RUTENBERG:

12 Q What's GX-37?

13 A An accident form for employee Eric Nelson from
14 May 7th, 2013.

15 Q So, that's about two weeks, about a week-and-a-
16 half before you filled out Mr. Jacobs' form, correct?

17 A Yes, yes.

18 Q Okay, what happened in this case? Feel free,
19 does this feel like, or is this a full accurate and
20 complete copy?

21 A Yes, it appears so.

22 Q Okay, do you have any reason to believe it's not?

23 A No.

24 Q All right, is this your handwriting? Excuse me,
25 did you sign this?

1 A Yes, I signed it.

2 Q Okay, did you fill out the other pieces?

3 A No. This is other handwriting. This would have
4 been filled out, well, I'm guessing whoever the lead was
5 at the time filled out the bottom portion. Eric filled
6 out the top portion.

7 Q What about the middle portion under description
8 of injury?

9 A That would have been filled out by, I guess,
10 whoever the lead would have been at the time.

11 Q Okay, so the lead does not sign this?

12 A No.

13 Q Did you review this?

14 A Yes.

15 Q This is filled out as a near miss accident isn't
16 it?

17 A That's what was checked, yes.

18 Q Do you know if there was ever another version
19 that was later made unchecked, that near miss accident?

20 A No. I don't believe so.

21 Q Okay, what's the second page?

22 A The second page is the accident investigation.

23 Q And the third?

24 A And the safety incident report that came out of
25 that.

1 Q Are these all full and accurate copies?

2 A Yes.

3 Q Is the handwriting on the second page yours?

4 A Yes.

5 Q So, you did do the accident investigation,
6 correct?

7 A Yes.

8 Q But, you did not fill out the accident form?

9 A No.

10 Q Did you sit in on the safety meeting, the safety
11 team meeting?

12 A I did.

13 Q Okay, and this was done roughly about the same
14 time as Mr. Jacobs', correct?

15 A A couple weeks prior.

16 Q Okay, did anybody ever raise any, was there any
17 injury associated with this?

18 A No.

19 Q Okay, and how do you know that?

20 A It was marked no injury. It was marked no
21 injury.

22 Q But, there is a near miss accident is how it's
23 marked on the front page?

24 A That's how it's marked.

25 Q Okay, what did Mr. Nelson do incorrectly?

1 A It looked like he, putting a pallet away onto a
2 rack and he dislodged the brackets, or the supports and
3 the weight of a couple other pallets caused it to collapse
4 and there must have been some damaged product.

5 Q Does it say that there's damaged product?

6 A The accident report doesn't list any. There's no
7 section for actual damage of property on there so, no. On
8 the accident report when I described what the incident
9 was, collapse due to weight of other pallets. I got the
10 same thing there too, is there's no, there's actually no
11 physical spot for the damage. But, I know it was noted,
12 but it was noted on the safety incident form that there
13 was. He was given a two for minor damage. So, there had
14 to be some bad product that came as a result of that.

15 Q And, in fact, on the accident investigation form
16 it says accident, not near miss, correct?

17 A Correct. So, that would have led me to believe
18 that a pallet would have dropped and there would have been
19 no, I guess, no loss to the company. I guess that may not
20 have been considered an accident, or it wouldn't have been
21 as there was no accident, or as there was already no
22 injuries. So, in this case the fact that there was damage
23 to company property is what made it an accident.

24 Q Even though on the first page it's referred to as
25 a near miss accident?

1 A Near miss accident, yeah, working with the
2 wording that I was given at the time.

3 Q Yes, and did Mr. Tom Nelson engage in a safety
4 violation?

5 A It was determined that, yes, because of his, his,
6 his operation of the tow motor was considered unsafe.

7 Q And what was he, what violation, what did he
8 violate?

9 A Well, there was no, well, the safety committee
10 determined that there was no actual discipline so it was
11 constructive feedback or coaching. So, technically,
12 there, there was no technical violation, per se, because
13 the safety incident report determined that there was no
14 actual discipline aside from basically a verbal warning.

15 Q And constructive feedback, coaching, or first
16 corrective action is not considered discipline?

17 A There was, yeah, there was, no, because there was
18 no actual discipline form filled out because of it. I
19 believe he was given some extra, some additional training
20 on a forklift. He was relatively new at the time.

21 Q But you don't know what the safety violation was?

22 A The, there was no, there was no safety violation
23 that came out of it. It was this, the, the points, the
24 points that we came to, which was the four here down in
25 the score guide, relegated us to constructive feedback,

1 coaching, or first step corrective action, verbal warning.
2 I guess the verbal warning would have been the discipline,
3 for lack of a better word.

4 Q Right, but you're talking about discipline. I'm
5 asking about the violation. Because you can have a
6 violation that leads to, can you have a violation that
7 leads to no disciplinary points?

8 A Sure. I mean, I don't, you know, what, you know,
9 if we wanted to go back into the, the handbook at the time
10 and find which specific violation this would have been, I
11 mean, we could have found something. And that's what we
12 would have needed to do if this form determined that we
13 needed discipline.

14 There would have been a, probably a, there is
15 a section in there for damage to company property through
16 carelessness or detriment to quality, there is, there is a
17 specific sub-section in there that I could give you if I
18 had the list in front of me. Which would have been, which
19 if this form had determined that there was discipline we
20 would have cited it.

21 Q Well, what did you coach, who coached him?

22 A Probably myself.

23 Q So, what did you coach him on?

24 A Probably just explaining how, in a similar
25 situation how he needed to be more aware of his

1 environment, more aware of the racks and the layout. When
2 he's raising or lowering the forks on the forklift to make
3 sure he's not catching what exactly happened, that he's
4 clear of obstructions when he's moving around. And I
5 believe, I think we gave him some extra time with our, the
6 employee who trained him.

7 Q Are the pallets heavy?

8 A Yes.

9 Q Could they hurt someone?

10 A They sure could.

11 Q Could they crush someone?

12 A If it landed on them squarely I suppose it could.

13 Q Okay, so this sounds like a very dangerous thing
14 that occurred, correct?

15 A I mean, there was no, the racking system where
16 this happened, there are typically employees like working
17 right around this racking area. It's generally the tow
18 motor and the -- in, unless somebody happened to be
19 walking by and a whole shelf collapsed the, you know, the
20 chance of injury for somebody else is relatively low.

21 Q Sure, but if they were there the actual injury
22 would be very high?

23 A Sure, it could be.

24 Q Is that right?

25 MR. ZAWADSKY: Object to form, speculative.

1 BY MR. RUTENBERG:

2 Q How heavy are these pallets?

3 A Ranges from, just depends on how much product is
4 on there, how thick the product is. It could be 100
5 pounds to 1,500 pounds.

6 Q And how high are they?

7 A They could be anywhere from a foot high to four
8 feet high.

9 Q I mean off the ground?

10 A Oh, off the ground. Well, these racks, the, the
11 second rack where this incident happened was probably five
12 feet off the ground from where the rack started.

13 Q Okay, I'm going to hand you is GX-33. Can you
14 identify the documents in GX-33, and take your time?

15 (Government's Exhibit No. GX-33 was marked
16 for identification.)

17 A Okay, this is an accident report documenting a
18 discussion I had, accident investigation, and a safety
19 incident report for an incident with Dennis Neubert from
20 October 16th of 2012.

21 Q And who's Dennis Neubert?

22 A Former employee of Dura-Fibre.

23 Q What kind of work did he do?

24 A He's a roll tender.

25 Q Do you recall this incident?

1 A Vaguely.

2 Q What happened?

3 A He was, he was pulling down a line of paper which
4 is fairly routine when you're stringing up the, stringing
5 up the laminator. And he was pulled down on a line of
6 paper and he felt a pain in his shoulder.

7 Q And was it determined he injured himself?

8 A He, yes, he had a sharp pain in his left shoulder
9 that he said it lasted approximately 30 minutes.

10 Q Okay, so this was a injury, not a near miss,
11 correct?

12 A Should have been an injury, yes.

13 Q Okay, did he report the pain to you at the end of
14 his shift?

15 A 11:00 p.m., yes. I was actually probably working
16 that night that this happened so he probably reported to
17 me fairly shortly after the incident.

18 Q Was he assessed points?

19 A He was not.

20 Q Okay, what does no lead available mean on
21 DURAFIBRE00223, under other contributing factors?

22 A There must not have been a, there must not have
23 been a lead operator on the machine that night.

24 Q And this you said was an accident, right?

25 A It should have been categorized, yes, it was

1 categorized as an accident.

2 Q Okay, did he receive any points for this being an
3 accident as per the rubric under the actual injury
4 incident type?

5 A No, no. It came down to constructive feedback,
6 coaching, or first step corrective action verbal warning.

7 Q In fact, did he receive, he received zero points,
8 right?

9 A Correct.

10 Q Is that TBD?

11 A Oh, under the actual injury type?

12 Q Yes.

13 A Yeah, I mean, at the time, I think it was put TBD
14 at the time because it was right after and that there was,
15 they were still unsure whether he was going to go in and
16 get treated, I believe.

17 Q Well, does one need to be treated in order for it
18 to be an injury?

19 A Well, no, but it would have effected, if he had
20 gone in for medical treatment that would have, you know,
21 that could have influenced this sheet. Why, why TBD was
22 written on there we, we only knew what we knew at the time
23 when we were going over this form. But I, my guess is at
24 the time maybe there was still a possibility that he was
25 going to go in and get it looked at. I don't know, see

1 this was on the 23rd, well, this was, this was done about
2 a, no, there's just some different dates on here. I'm not
3 sure exactly when this, the supervisor at the time dated
4 it 10/18. Dennis didn't date it until 10/23. So, I'm not
5 sure why there was the difference in, difference in dates.

6 Q Was he ever given points, and by points I don't
7 mean the disciplinary points, I mean the rubric points for
8 the actual injury incident type?

9 A The actual injury?

10 Q Incident type, I'm talking about on the rubric
11 itself.

12 A Oh, I don't believe so.

13 Q Okay, but --

14 A Or it, I would have, it that would have happened
15 I guess I would have expected that this form would have
16 been amended after the fact, but I, I don't want to speak
17 on that because I had no, I would not have been, had any
18 involvement in that.

19 Q And perhaps it was, but if it was I did not
20 receive it. Now, were you a part of the safety team
21 meeting?

22 A No.

23 Q Okay, so this seems to be a different version of
24 the safety incident report than what's in Jacobs' was,
25 right?

1 A Yeah, it must have changed at some point in that
2 because there wasn't the injury and/or, or injury or near
3 miss box.

4 Q Right, so you phrased this to, you determined
5 this was an accident, but he received no points for this
6 being an accident, correct? Off the record, please.

7 (Off the record.)

8 MR. RUTENBERG: Okay, back on the record.

9 BY MR. RUTENBERG:

10 Q When we went off the record we were talking about
11 the Exhibit 33 and why Mr. Neubert was not assigned any
12 points for the actual injury incident type on the safety
13 incident report, is that right?

14 A Yes.

15 Q Okay, how many points was he assigned per the
16 table?

17 A Six.

18 Q Okay, and do you believe he should have been
19 assigned more if he was, in fact, injured?

20 A Because I haven't given a thought because I
21 wasn't involved in here, so --

22 Q Well, following your rubric.

23 A Well, following the rubric, yeah, I guess if he
24 was, if he was injured, well, I guess he, it depends on
25 the seriousness of, if the, it depends on the seriousness

1 of the injury, but I guess at a minimum if he would have
2 had one more point on there, which would have gotten him
3 up from six to seven which still would have been a, a
4 verbal warning at that point, if it was a recordable, if
5 it was a recordable that, or if there was, I should say if
6 it was recordable or if there was any type of medical
7 treatment sought then, yes, it could have pushed him up to
8 eight points which would have been four disciplinary
9 points.

10 Q And you indicated that there was no, at least
11 initially, no points awarded for actual injury incident
12 type because of a waiting to see how bad the injury was to
13 get medical attention?

14 A Well, there was no medical attention initially.

15 Q Okay.

16 A So, but again, I don't remember, I don't remember
17 if there was ever, if, if it was an intent by him to get
18 seen or if it was a, he said, initially he said to me that
19 it only lasted 30 minutes. So, at that point he probably
20 just forgot about it. But if it was something that would
21 have flared up the following day, I can't speculate on
22 what would have gone through his head. But at some point
23 if the pain doesn't go away you're going to go in and get
24 it checked.

25 Q Turning to the second page of Exhibit 33, what is

1 this?

2 A Documentation that I put together which must have
3 stemmed from the safety incident report. It's my coaching
4 or constructive feedback discussion I had with Dennis.

5 Q Okay, and why did you record this on paper?

6 A Probably because I was asked to document it on
7 paper.

8 Q By who?

9 A Probably by Jamie or I, I made it a point to when
10 I was supervisor just to document a lot of my
11 conversations with them, that regard, or that didn't
12 necessarily lead to discipline, just for my own records.
13 Just --

14 Q Okay, did you do this, all right, let me ask you
15 this can you read the last sentence of paragraph three?

16 A Starting with I told Dennis?

17 Q Yes.

18 A I told Dennis that the reason he would not be
19 getting disciplined was that Luke told all employees that
20 if they reported near misses before the end of their shift
21 that they would not be subject to any punishment.

22 Q So, ultimately it was decided this was a near
23 miss, not --

24 A Right.

25 Q -- not an injury, correct? Excuse me, not an

1 accident?

2 A Well, maybe is the wording that I used, but it
3 was determined that there was no, yeah, I guess that there
4 was no accident. I don't know why I was, there was a lot
5 of, obviously, with that way that that form was worded, I
6 mean, there may have been some, you know, some confusion
7 on the part of near miss versus accident and near miss
8 accident.

9 Q Well, was he injured?

10 A He was injured, yeah. Yeah, why I, why I put
11 this as a, a near miss I don't know.

12 Q Well, I mean, you record it just right then and
13 there that he did not get points because he reported it as
14 the near miss, correct?

15 A He did not get, him not getting points had, yeah,
16 him not getting points had nothing to do with him
17 reporting it. It was investigated at the time as an
18 accident because there was an injury.

19 Q Well, it says right here I told Dennis that the
20 reason he would not be getting discipline was that Luke
21 told all employees that if they reported near misses
22 before the end of their shift that they would not be
23 subject to any punishment. And isn't that what happened
24 here?

25 A Yeah. Apparently I, like I said, I don't know if

1 there was a, there was some confusion here between a near
2 miss and an accident because, ultimately, you know, there,
3 the injury didn't lead to anything. So, maybe, I don't
4 know, maybe it was looked at as a, a near miss. Like I
5 said there may have been some, there was probably some
6 confusion on the near miss versus an accident.

7 Q Do you know how long Tim Jacobs was in pain when
8 he hurt his ankle?

9 A No. I don't believe it was --

10 Q How does hurting an ankle, does in your mind
11 hurting an ankle and hurting a shoulder differ in any way?

12 A No.

13 Q But in this case with Dennis Neubert it's found
14 that he, in fact, had a near miss eventually, correct?

15 A Well, it was still, I mean, that's what I told
16 him. Yeah, I --

17 Q Who makes the ultimate decision? You make the
18 ultimate decision, right?

19 A Yeah, I, I don't know why I put on there that it
20 was a near miss because everything about it says it should
21 have been an accident.

22 Q But he received no disciplinary points because of
23 his near miss?

24 A Nothing, well, there was still a safety incident
25 report. There was still a safety incident report that was

1 done that would not have been done if it was a near miss
2 from the beginning. So, it may have been investigated
3 initially as an accident and then after the safety
4 incident report, I don't know, maybe they didn't, they
5 didn't decide that it was, I don't know if they re-labeled
6 it near miss from an accident because it didn't lead to
7 anything beyond that. I don't know.

8 Q Does this appear in your mind to be an
9 inconsistent application of Dura-Fibre's rules?

10 A Yeah, there is. It does in the sense that,
11 again, the near miss versus accident I think was confusing
12 at the time. Which eventually, again, another reason that
13 it led to this form being, I guess, cleared up later on.

14 Q After May 2013?

15 A Yes.

16 Q And, again, this was in October of 2012 so this
17 was confusing for at least between October and May 2013,
18 correct?

19 A Yes.

20 Q Okay, I'm handing you Exhibit 34. Off the record
21 for a second.

22 (Government's Exhibit No. 34 was marked for
23 identification.)

24 (Off the record.)

25 MR. RUTENBERG: Back on the record.

1 BY MR. RUTENBERG:

2 Q What I'm handing you is labeled as GX-34. Do you
3 recognize GX, well, take a moment to look at GX-34 and do
4 you recognize it?

5 A Accident form and safety incident report for
6 another former employee, Joe Munos, from March 15th, 2012.

7 Q Is it Munes or Munos?

8 A I think it's Munes actually.

9 Q Does it appear to be a full accurate and complete
10 representations of these documents?

11 A Appears so. I don't show that I had really any
12 involvement in any of this, so --

13 Q Okay.

14 A -- yeah, not real sure what happened here.

15 Q Who did do this investigation? Do you know?

16 A Supervisor, I don't know is that, I'm not even
17 sure whose signature that is.

18 Q Okay.

19 A Might have been --

20 Q Based off of the face of the documents and my
21 understanding you did not do this investigation. Can you
22 determine what this person did?

23 A He scrapped his left, scrapped his right leg up
24 above the roll stands. Okay, so he stepped into a, okay,
25 so he stepped into an opening, up on our bridge above the

1 roll stands there's openings where the paper dives down or
2 it, where the paper is strung through and looks like he
3 had stepped through that and scrapped his leg up. He
4 didn't fall all the way through, but scrapped his leg as
5 he kind of halfway fell into that.

6 Q Okay, could you tell who are the committee
7 members?

8 A Well, it looks like, I'm guessing that's Luke's
9 signature under manager/supervisor. I'm not sure where
10 Steve or I were at the time. Jamie Gonnering, Lisa Van
11 Kooy, I'm not sure who the, I'm not sure who number four
12 is. Looks like a Mike, maybe.

13 Q Okay, I appreciate that. I can't read it either.
14 I'm just going to hand you GX-35. Do you recognize GX-35?

15 (Government's Exhibit No. GX-35 was marked
16 for identification.)

17 A Nothing I've seen before, but it's the accident
18 form investigation and safety incident report for an
19 incident with Lisa Van Kooy in July 11th of 2012.

20 Q Okay, and do you recognize any of those
21 signatures on the bottom of GX-35?

22 A Ted Ruten, Jamie Gonnering, and the middle one
23 I'm not sure.

24 Q You can't tell who the supervisor is?

25 A The supervisor looks like Luke.

1 Q Oh, okay.

2 A I see the LB and that's my --

3 Q Fair enough.

4 A -- determination I can get from that.

5 Q All right, you can put that away. Thank you.

6 And then GX-38 is what I'm handing you. Do you recognize
7 GX-38?

8 (Government's Exhibit No. GX-38 was marked
9 for identification.)

10 A A near miss incident form from Mike Prokash on
11 May 23rd, 2013.

12 Q Did you conduct this investigation?

13 A Yes.

14 Q Do these appear to be full accurate and complete
15 copies of the original documents?

16 A Yes.

17 Q Was this, was May 24th, correct, 2013?

18 A Yeah, this incident happened, yeah, right before
19 midnight and I was notified; it must have been right after
20 midnight.

21 Q Okay, this actually occurred on the same day Mr.
22 Jacobs was terminated, right?

23 A Appears so.

24 Q What happened here?

25 A It looks like Mike was working under the roll

1 stands, bumped his head, had some minor discomfort. That
2 was about it.

3 Q Okay, did he have any other contributing factors
4 deducting from his number of points he was awarded, he was
5 issued?

6 A He did.

7 Q How many?

8 A Three.

9 Q And what were the reasons?

10 A Let's see there was, it says cramp, it was a
11 cramped work area. There was no first aid. There was no
12 signage or the floor wasn't painted. No ability to get
13 trained since last accident.

14 Q Is receiving no first aid a contributing factor,
15 mitigating circumstance?

16 A Apparently it was in this case.

17 Q Okay, Mr. Jacobs he also received no first aid,
18 is that correct?

19 A Yes.

20 Q Okay, but did he receive any first aid, no first
21 aid as a mitigating factor?

22 A He did not.

23 Q I'm going to give you Exhibit 25. Do you
24 recognize Exhibit 25?

25 (Government's Exhibit No. GX-25 was marked

1 for identification.)

2 A Yes. It's an e-mail that I had sent to Jamie and
3 Luke on May 30th, 2013 regarding a conversation I had with
4 Steve Wilz about his shoulder which appeared to be about a
5 week and change after the accident.

6 Q And what did Mr. --

7 A He said he --

8 Q What did Mr. Wilz say to you?

9 A He said he was fine. He could move it up and
10 down, rotate it with no discomfort. He said if he
11 actually up, actually would come up and punch me it would
12 probably be sore but otherwise it's fine.

13 Q And did you take someone who get punched in the
14 shoulder as indicating he was injured or still injured?

15 A No.

16 Q Okay, and why? Who did you send this document
17 to?

18 A To Jamie and Luke.

19 Q Did they request you do so?

20 A I either took it upon myself to check with Steve
21 or Jamie had called me at some point and said, hey, can
22 you check with Steve just to see how his shoulder's doing.

23 Q Do you recall if in the week that Mr. Wilz
24 received, tweaked his shoulder he sought medical
25 attention?

1 A I don't, I don't want to say for sure, I don't
2 believe he did.

3 Q Okay, handing you GX-26. Do you recognize GX-26?

4 (Government's Exhibit No. GX-26 was marked
5 for identification.)

6 A Not off-hand here. Appears to be a, just a list
7 of items to discuss at a union management meeting from
8 June 25th, 2013.

9 Q Did you type these notes?

10 A No.

11 Q Were you at that meeting?

12 A It says I was.

13 Q Okay, do you have independent recollection --

14 A I have no, I have no recollection of this short
15 of reading everything that's on here.

16 Q Do you know who typed up these, we'll call them
17 notes?

18 A I would guess Jamie.

19 Q Okay, but you don't have any personal knowledge?

20 A I don't know, not 100 percent sure.

21 Q All right, it indicates, these notes indicate
22 that Jamie, do you see where it says Jamie and Scott
23 conducted the investigation of the accident?

24 A Yes.

25 Q Did Ms. Gonnering help you with the investigation

1 of --

2 A This --

3 Q -- Mr. Jacobs?

4 A This was the Scott, this was Scott Gehl. This
5 is, the reason I know that is because it stopped the
6 machine and talked to Steve Wilz and Tim Jacobs. This is
7 when I was out of the office. So, Jamie and Scott Gehl,
8 which she should have put G on there, they were the ones
9 who actually, that's, that's the Scott that she's
10 referring to.

11 Q Okay, I'm just going to hand you GX-42. Do you
12 recognize GX-42?

13 (Government's Exhibit No. GX-42 was marked
14 for identification.)

15 A Appears to be some handwritten meeting minutes
16 from a meeting on May 30th, 2013.

17 Q Is this your handwriting?

18 A It is not.

19 Q Do you recall being at this meeting?

20 A I do not.

21 MR. RUTENBERG: I have no further questions.

22 MR. ZAWADSKY: So, 9:00 o'clock tomorrow morning
23 with Mr. Benrud?

24 MR. RUTENBERG: Yes, sir.

25 MR. ZAWADSKY: Okay.

1 MR. RUTENBERG: Thank you very much.

2 (Whereupon, at 3:15 p.m., the deposition was
3 concluded.)

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This is to certify that the foregoing transcript

Deposition of: Scott Blair

In the matter of: Dept of Labor v DURA-FIBRE, LLC

Before: US District Court of Green Bay District, WI

Date: 11-29-17

Place: Appleton, Wisconsin

were duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.



Court Reporter

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